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BRIEF FOR PLAINTIFF IN ERROR

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1918.

No. 714

EUGENE V. DEBS,
Plaintiff in Error.

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

In Error to District Court of the United States for the Northern District of Ohio.

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BRIEF FOR PLAINTIFF IN ERROR

STATEMENT OF CASE.

(Citations to Transcript Are to Printed Record.)

On June 29, 1918, in the United States District Court, Eastern Division, of the Northern District of Ohio, the grand jury presented an indictment against Eugene V. Debs, consisting of 10 counts (1-138). All were under Section 3, Title I, of an Act of Congress of June 15, 1917, as amended by Act of May 16, 1918, known as the Espionage Act. A motion to quash was entered as to the indictment and each count thereof (139-140); also a demurrer (141-150). Both motions were denied (150-151). Before the trial 4 of the counts were withdrawn (Nos. 1, 2, 5 and 9 of the indictment (151). A verdict of not guilty was instructed as counts 6 and 8 (153), leaving only four counts for the consideration of the jury. The defendant was found not guilty upon the 10th

count, and guilty upon counts 3, 4 and 7 (154). for a new trial (155) and in arrest of judgm were overruled (157). Judgment was rendere ingly, and Mr. Debs was sentenced to serve 10 the state penitentiary of West Virginia, upo these three counts, the terms to run concurrent

As to count 3 (29-42), the charge is that on 1918, at Canton, Ohio, while the United State war with the Imperial German Government, d did unlawfully, wilfully and feloniously cause tempt to cause and incite and attempt to incit ordination, disloyalty, mutiny and refusal of the military and naval forces of the United Sta is to say, defendant made a public speech t sembly of people, among whom were citizens the ages of 21 and 30 (two of whom are name intent to cause and attempt to cause insubor etc. The speech referred to is set out in full.

Upon the introduction of testimony as to the of the speech at Canton, it appeared that th speech was considerably longer than appears i dictment, and different at many points. We contention upon this variance, since Mr. Debs to stand upon the speech as actually made, shall make our references in this brief to the m plete report, as introduced by the governme set out at this point, therefore, the fuller tex speech, in lieu of the text used in the indictme 215).

SPEECH AS REPORTED BY E. R. STERLING.

Delivered by Eugene V. Debs, at Nimisilla Park, Ohio, Sunday Afternoon, June 16, 1918.

Mr. Debs: Comrades, friends and fellow- for this very cordial greeting, this very heart tion, I thank you all with the fullest appreci

your interest in, your devotion to, the cause for which I am to speak to you this afternoon. (Applause.)

To speak for labor; to plead the cause of the men and women and children who toil; to serve the working class, has always been to me a high privilege (applause).

I have just returned from a visit over yonder (pointing to the workhouse) (laughter), where three of our most loyal comrades (applause) are paying the penalty for their devotion to the cause of the working class. (Applause.) They have come to realize, as many of us have, that it is extremely dangerous to exercise the constitutional right of free speech in a country fighting to make Democracy safe in the world. (Applause.)

I realize that, in speaking to you this afternoon, that there are certain limitations placed upon the right of free speech. I must be exceedingly careful, prudent, as to what I say, and even more careful and more prudent as to how I say it. (Laughter.) I may not be able to say all I think (laughter and applause); but I am not going to say anything that I do not think (applause). But, I would rather a thousand times be a free soul in jail than to be a sycophant and coward on the streets (applause and shouts). They may put those boys in jail—and some of the rest of us in jail—but they can not put the Socialist movement in jail (applause and shouts). Those prison bars separate their bodies from ours, but their souls are here this afternoon (applause and cheers). They are simply paying the penalty that all men have paid in all of the ages of history for standing erect, and for seeking to pave the way to better conditions for mankind (applause).

If it had not been for the men and women, who, in the past have had the moral courage to go to jail, we would still be in the jungles (applause).

This assemblage is exceedingly good to look upon. I wish it were possible to give you what you are giving me this afternoon (laughter). What I say here amounts to but little; what I see here is exceedingly important (applause). You workers here in Ohio, enlisted in the greatest cause ever organized in the interest of your class, are making history today in the face of threatening trouble of all kinds—history that is going to be read with profound interest by coming generations (applause).

There is but one thing that you have to be concerned about, and that is that you keep four-square with the principles of the international Socialist movement (applause). It is only when you begin to compromise that trouble begins (applause). So far as I am concerned, it does not matter what others may say, or think, or do, as long as I am sure that I am right with myself and the cause (applause). There are so many who seek refuge in the popular side of a great question. On account of that, I hope, as a Socialist, I have long since learned how to stand alone (applause).

For the last month I have been traveling over the Hoosier State; and, let me say to you, that, in all my connection with the Socialist movement, I have never seen such meetings, such enthusiasm, such unity of purpose; never have I seen such a promising outlook as there is today, notwithstanding the statement they have published repeatedly that our leaders had deserted us (laughter). Well, for myself, I never had much faith in leaders, anyway (applause and laughter). I am willing to be charged with almost anything, rather than to be charged with being a leader. I am suspicious of leaders, myself, and especially of the intellectual variety (applause). Give me the rank and file every day in the week. If you go to the City of Washington, and you examine the pages of the Congressional Directory, you will find that almost all of those corporation lawyers and cowardly politicians, members of Congress, and misrepresentatives of the masses—you will find that almost all of them claim, in glowing terms, that they have risen from the ranks to places of eminence and distinction. I am so glad that I can not make that claim for myself (laughter). I would be ashamed to admit that I had risen from the ranks. When I rise it will be with the ranks, and not from the ranks (applause).

When I came away from Indiana, the comrades said: "When you cross the line and get over into the Buckeye State, tell the comrades over there that we are on duty and doing duty. Give them for us, a hearty greeting, and tell them that we are going to make a record this fall that will be read all around the world" (applause).

The Socialists of Ohio, it appears, are very much alive this year. The party has been killed recently (laughter) which, no doubt, accounts for its extraordinary activity (laughter). There is nothing that helps the Socialist

party so much as receiving an occasional death blow (laughter and cheers). The oftener it is killed the more boundless, the more active, the more energetic, the more powerful it becomes.

They who have been reading the capitalist newspapers realize what a capacity they have for lying. We have been reading them lately. They know all about the Socialist party—the Socialist party movement, except what is true (laughter). Only the other day they took an article that I had written—and most of you have read it—most of you members of the party, at least—and they made it appear that I had undergone a marvelous transformation (laughter). I had suddenly become changed—suddenly come to my senses; I had ceased to be a wicked Socialist, and had become a respectable Socialist (laughter), a patriotic Socialist—as if I had ever been anything else (laughter).

What was the purpose of this deliberate misrepresentation? It is so self-evident that it suggests itself. The purpose was to sow the seed of dissension in our ranks; to have it appear that we were divided among ourselves; that we were pitted against each other, to our mutual undoing. But Socialists were not born yesterday (applause). They know how to read capitalist newspapers (laughter and applause); and to believe exactly opposite what they read (applause and laughter).

Why should a Socialist be discouraged on the eve of the greatest triumph in all the history of the Socialist movement (applause)? It is true that these are anxious, trying days for us all—testing days for the women and men who are upholding the banner of the working class in the struggle of the working class of all the world against the exploiters of all the world (applause); a time in which the weak and cowardly will falter and fail and desert. They lack the fiber to endure the revolutionary test; they fall away; they disappear as if they had never been. On the other hand, they who are animated with the unconquerable spirit of the Social revolution, they who have the moral courage to stand erect and assert their convictions; stand by them; fight for them; go to jail or to hell for them, if need be (applause and shouts)—they are writing their names, in this crucial hour—they are writing their names in fadeless letters in the history of mankind (applause).

Those boys over yonder—those comrades of ours—and how I love them—aye, they are my younger brothers (laughter and applause); their very names throb in my heart, and thrill in my veins, and surge in my soul (applause). I am proud of them; they are there for us (applause); and we are here for them (applause, shouts and cheers). Their lips, though temporarily mute, are more eloquent than ever before; and their voice, though silent, is heard around the world (great applause).

Are we opposed to Prussian militarism (laughter)? (Shouts from the crowd of "Yes, Yes"). Why, we have been fighting it since the day the Socialist movement was born (applause); and we are going to continue to fight it, day and night, until it is wiped from the face of the earth (thunderous applause and cheers). Between us there is no truce—no compromise.

But, before I proceed along this line, let me recall a little history, in which, I think, we are all interested.

In 1869 that grand old warrior of the Socialist revolution, the elder Liebknecht, was arrested and sentenced to prison for three months, because of his war, as a Socialist, on the Kaiser and on the Junkers that rule Germany. In the meantime the Franco-Prussian war broke out. Liebknecht and Bebel were the Socialist members in the Reichstag. They were the only two who had the courage to protest against taking Alsace-Lorraine from France and annexing it to Germany. And for this they were sent two years to a prison fortress charged with high treason; because, even in that early day, almost fifty years ago, the leaders, these forerunners of the international Socialist movement, were fighting the Kaiser and fighting the junkers of Germany (great applause and cheers). They have continued to fight them from that day to this (applause). Multiplied thousands of them have languished in the jails of Germany because of their heroic warfare upon the ruling class of that country (applause).

Let us come down the line a little further. You remember that, at the close of Theodore Roosevelt's second term as President, he went over to Africa (laughter) to make war on some of his ancestors (laughter) (continued shouts, cheers, laughter and applause). You remember that, at the close of his expedition, he visited all of the capitals of Europe; and he was wined and dined, dignified

and glorified by all of the Kaisers and Czars and Emperors of the old world (applause). He visited Potsdam while the Kaiser was there; and, according to the accounts published in the American newspapers, he and the Kaiser were soon on the most familiar terms (laughter). They were hilariously intimate with each other, and slapped each other on the back (laughter). After Roosevelt had reviewed the Kaiser's troops, and, according to the same accounts, he became enthusiastic over the Kaiser's troops, and said: "If I had that kind of an army, I would conquer the world" (laughter). He knew the Kaiser then just as well as he knows him now (laughter). He knew that he was the Kaiser, the Beast of Berlin. And yet, he permitted himself to be entertained by the Beast of Berlin (applause); had his feet under the mahogany of the Beast of Berlin; was cheek by jowl with that Beast of Berlin (applause). And while Roosevelt was being entertained royally by the German Kaiser, that same Kaiser was putting the leaders of the Socialist party in jail for fighting the Kaiser and the junkers of Germany (applause). Roosevelt was the guest of honor in the whitehouse of the Kaiser, while the Socialists were in the jails of the Kaiser for fighting the Kaiser (applause). Who was fighting for Democracy? Roosevelt? (Shouts of "no.") Roosevelt, who was honored by the Kaiser, or the Socialists who were in jail by the order of the Kaiser? (applause).

"Birds of a feather flock together" (laughter).

When the newspapers reported that Kaiser William and ex-President Theodore recognized each other at sight, were perfectly intimate with each other at the first touch, they made the admission that is fatal to the claims of Theodore Roosevelt that he is a great friend of the people and the champion of Democracy; they admitted that they were kith and kin; that they were very much alike; that their ideas and ideals were about the same. If Theodore Roosevelt is now the great champion of Democracy (laughter), the arch—the arch foe of autocracy (laughter), what business had he as the guest of honor of the Kaiser? And when he met the Kaiser, and did honor to the Kaiser, under the terms imputed to him, wasn't it pretty strong proof that he, himself, was a kaiser at heart? (applause). Now, after being the guest of Emperor William, the Beast of Berlin, he came back

to this country, and he wants you to send ten million men over there to kill the Kaiser (applause and laughter); to murder his former friend and pal (laughter). Rather queer, isn't it? And yet, he is the patriot, and we are the traitors (applause). And I challenge you to find a Socialist anywhere on the face of the earth who was ever the guest of the Beast of Berlin (applause), except as an inmate of his prison—the elder Liebknecht and the younger Liebknecht, the heroic son of his immortal sire.

A little more history along the same line. In 1902 Prince Henry paid a visit to this country. Do you remember him (laughter)? I do, exceedingly well. Prince Henry is the brother of King William. Prince Henry is another Beast of Berlin, an autocrat, an aristocrat, a junker of junkers—very much despised, very much despised by our American patriots. He came over here in 1902 as the representative of Kaiser Wilhelm; he was received by Congress, by several state legislatures—among others, by the state legislature of Massachusetts, then in session. He was invited there by the capitalist captains of that so-called commonwealth. And when Prince Henry came there, there was one member of that body who kept his self-respect, put on his hat, and, as Henry, the Prince, walked in, that member of the body walked out. And that was James F. Carey, the Socialist member of that body (applause). All of the rest—all of the rest of the representatives in the Massachusetts legislature—all, all of them—joined in doing honor, in the most servile spirit, to the high representative of the autocracy of Europe. And the only man who left that body was a Socialist. And yet (applause), and yet they have the hardihood to claim that they are fighting autocracy and we are in the service of the German government (applause).

A little more history along the same line. I have a distinct recollection of it. It occurred just fifteen years ago when Prince Henry came here. All of our plutocracy, all of the wealthy representatives living along Fifth avenue—all, all of them—threw their palace doors wide open and received Prince Henry with open arms. They were not satisfied with this; they got down on their stomachs; they groveled in the dust at his feet; and our plutocracy —women and men alike—vied with each other to get

down and lick the boots of the Prince Henry, the representative of the Beast of Berlin (applause). And still our plutocracy, our junkers—don't think for a moment that the junkers are confined to Germany (applause). It is precisely because we refuse to believe this they brand us as disloyalists. They want our eyes focused on the junkers in Berlin, so that we will not see those within our own borders.

I hate, I loathe, I despise junkerdom. I have no earthly use for the junkers of Germany, and not one particle more use for the junkers in the United States (thunderous applause and cheers).

They tell us we live in a great Republic; our institutions are Democratic; we are a free people (laughter). This is too much, even as a joke (laughter). It is not a subject for levity; it is an exceedingly serious matter.

To whom do the Wall street junkers in our country—to whom do they marry their daughters? After they have wrung the countless hundreds of millions from your sweat, your agony, your life-blood, in a time of war as well as in a time of peace, they invest these billions and millions in the purchase of titles of broken-down aristocrats, and to buy counts of no-account (laughter). Are they satisfied to wed their daughters to honest working men? (Shouts from the crowd: "No.") to real democrats? Oh, no. They scour the markets of Europe for fellows who have titles and nothing else (laughter). And they swap their millions for the titles; so that matrimony, with them, becomes entirely a matter of money (laughter), literally so.

These very gentry, who are today wrapped up in the American flag, who make the claim that they are only patriots, who have their magnifying glasses in hand, who are scanning the country for some evidence of disloyalty, so eager, so ready to apply the brand to the men who dare to even whisper opposition to junker rule in the United States. No wonder Johnson said that "Patriotism is the last refuge of scoundrels." He had the Wall street gentry in mind, or their prototypes, at least; for in every age it has been the tyrant who has wrapped himself in the cloak of pratiotism, or religion, or both (shouts of "good, good," from the crowd) (applause).

They would have you believe that the Socialist party consists, in the main, of disloyalists, and traitors. It is

true, in a certain sense. We are disloyalists and trai
to the real traitors of this nation (applause); to the g
that, on the Pacific coast, are trying to hang T
Mooney, in spite of the protest of the whole civil
world (applause, shouts and cheers).

I know Tom Mooney intimately,—as if he were my
brother. He is an absolutely honest, innocent man (
plause). He had no more to do with the crime w
which he is charged than I have (applause). And, if
ought to go to the gallows, so ought I. If he is gui
every man who belongs to a labor organization or to
Socialist party is, likewise, guilty.

What is he guilty of? I'll tell you. I am familiar w
his record. For years he has been fighting the battles
the working class out on the Pacific coast. He refused
be bribed or to be browbeaten. He continued loyally
the service of the working class, and for this he w
marked. They said: "He can't be bought; he refu
to be bribed, and he cannot be intimidated. Therefo
he must be murdered" (applause).

Let us review another bit of history. Do you reme
ber that Francis J. Heney, the special investigator
the National Administration, was shot down in the cou
room in San Francisco? You remember it, don't yo
The United Railways, consisting of a lot of plutocra
hide binders, organized in the Chamber of Commerc
absolutely own and control the City of San Francisc
It is their private reservation. Their will is the supre
law. Take your stand against them, you are doome
They do not hesitate to plot murder to perpetuate the
murderous regime. Tom Mooney was the only repr
sentative of the working class they could not control (a
plause). They owned the railways; they controlled t
great industries; they were the industrial masters; th
were the political rulers; from their decision there w
no appeal—the real autocrats of the Pacific coast—
infamous as any that ever ruled in Germany or any oth
country (applause). And when their rule became so co
rupt that, at last, a grand jury was found that indicte
them, and they were placed on trial, and Francis
Heney, who has just incriminated the packers and foun
another gang—the packers of Chicago—Francis
Heney, who had been selected by the national admini
tration to assist in the prosecution, this same gang, re

resented by the Chamber of Commerce; this gang of plutocrats, autocrats and hide binders, hired a murderer to shoot Francis J. Heney down in the court room, and he did. Francis J. Heney happened to live through it. But that wasn't their fault. The identically same gang that hired the murderer to kill Heney, that very same gang are also for the execution of Tom Mooney (applause). Every solitary—every one of them claims to be an arch-patriot; every one insists through his newspapers that he is fighting to make Democracy safe in the world. What humbug! What rot! What false pretense! These autocrats, these tyrants, these red-handed robbers and murderers, the patriots, while the men who have the courage to stand up face to face with them and fight them in the interest of their exploited victims—they are the disloyalists and traitors. If this be true, I want to take my place side by side with the traitors in this fight (applause).

Why the other day they sent Kate Richard O'Hare to the penitentiary for ten years. Oh, just think of sentencing a woman to the penitentiary for talking (laughter). The United States, under the rule of the plutocracy, is the only country that would send a woman to the penitentiary for ten years for exercising her constitutional right of free speech (applause). If this be treason let them make the most of it (applause).

Let me review another bit of history in connection with this case. I have known Kate Richard O'Hare intimately for twenty years. I know her record by heart. Personally, I know her as if she were my own younger sister. All who know her know she is a woman of absolute integrity (applause). And they know that she is a woman of unimpeachable loyalty to the Socialist movement (applause). When she went out into Dakota and made her speech, followed by plain clothes men in the service of the Government intent upon encompassing her arrest and her prosecution and her conviction—when she was out there, it was with the knowledge that sooner or later they would accomplish their purpose. She made a certain speech, and that speech was deliberately misrepresented for the purpose of securing her conviction. The only testimony against her was that of a hired witness. And when thirty farmers, men and women, who were in the audience she addressed—heard the speech,

when they went to Bismarck to testify in her fav
swear that she had never used the language sh
charged with having used, the judge refused to
them to go upon the stand. This would seem incr
to me, if I had not had some experience of my ow
a Federal court (applause).

Who appoints the Federal judges? The people
all of the history of the country, the working class
never named a Federal judge. There are 121, and
solitary one of them holds his position, his te
through the influence and power of corporate ca
The corporations and trusts dictate their appoint
And when they go to the bench, they go, not to
the people, but to serve the interests that placed
where they are (applause).

Why, the other day, by a vote of five to four—a
of craps game—(laughter) come seven, come ele
(laughter) they declared the child labor law uncon
tional (laughter), a law secured after twenty yea
education and agitation on the part of all kinds of
ple. And yet, by a majority of one, the Supreme C
a body of corporation lawyers—with just one sol
exception—wiped it from the statute books, and th
a Democracy, so that we may still continue to grin
flesh and blood and bones of puny little children
profits for the junkers of Wall street (applause).
this in a country that is fighting to make Democ
safe in the world (laughter). The history of this c
try is being written in the blood of the childhood
have murdered.

These are not very palatable truths to them. The
not like to hear them; and they do not want you to
them. And that is why they brand us as undesi
citizens (laughter and applause), and as disloyalists,
as traitors. If we were traitors—if we were traito
the people, we would be eminently respectable citi
of the republic; we could hold high office, and we c
ride in limousines; and could be pointed out as pe
who had succeeded in life, in honorable pursuits.
precisely because we are disloyal to the traitors tha
are loyal to the people of this country (applause).

Scott Nearing. You have heard of Scott Nearing
plause). He is the greatest teacher in the United St
(applause). He was in the University of Pennsylv

until the Board of Trustees, consisting of great capitalists, found that he was teaching true economics to the students of the university. Then they said—just as the same usurers, the same money changers, the same Pharisees, the same hypocrites said of the Judean carpenter twenty centuries ago — of Jesus Christ, who was a working man, and an agitator, and an undesirable, they said: "He is preaching a false religion." And they crucified him. And his lineal descendants said: "He is preaching false economics. We cannot crucify him, as we did his elder brother, so we will starve him to death (applause). We will discharge him and blacklist him, and make it impossible for him to get a job. He is a dangerous man; he is teaching the truth." And the truth, Oh, the truth has always been unpalatable to the class who live out of the sweat of the working class (applause).

True, Max Eastman (applause) was indicted and his paper suppressed, just as papers with which I have been connected are all suppressed. What a wonderful compliment they paid us (laughter and applause). They are afraid that we might contaminate you. You are their wards; they are your guardians (laughter). They must see to it that our vicious doctrines don't reach your ears. And so, in our Democracy, under our free institutions, they flatter our press, and they imagine that they have silenced revolutionary propaganda. What a mistake they made. We ought to pass a resolution of thanks and gratitude to them. Thousands of people, who have never heard of our paper before, are now inquiring for it, wanting to see it. They have started inquiry and curiosity in our propaganda. And woe to the man who reads our Socialist literature from curiosity. He is a goner (applause). I have known of a thousand experiments, but I have never known of a single man or woman to escape it.

John M. Work. You know John, now, don't you, who is now on the Milwaukee Leader? When I first knew John he was a lawyer out in Wisconsin. The corporation capitalists became alarmed because of the rapid advancement of the Socialist movement. So they said: "We have to engage some bright fellow to fight this." They said: "Well, John, you are a bright young lawyer; and you have a great career before you. We want

to engage you to find out all you can about S
and then proceed to counteract its baneful effe

John got some Socialist literature, and began
it; and after he had read the second volume
full-fledged Socialist, and he has been fighting
cialism ever since.

How short-sighted the ruling class is. Cu
stone blind. The exploiter cannot see beyond th
his nose. He can see a chance for an opening; h
cunning enough to know what graft is and wh
and how it can be secured, but he has no vis
the slightest. He knows nothing of the great th
world that spreads out in all directions. Tha
penalty that the exploiter pays. Rockefeller
Every move he makes hastens the coming of hi
Every time he and his class strike a blow at the
ist movement it reacts upon them. Every ti
strike us, they hit themselves. It never fails (ap
Every time they strangle a Socialist newspap
add a thousand voices proclaiming the eternal
the principles and doctrines of Socialism. Th
us in spite of themselves.

Socialism is a growing idea, an expanding phil
It is spreading over the face of the earth. It is
less to resist it as it would be to try to arrest t
rise on the morrow. It is coming, coming, com
along the line. Can't you see it? If you can't,
an oculist; there is something the matter; you a
ing in vision, in common understanding. The
movement in history. What a privilege it is to s
I have regretted a thousand times that I can d
tle for the movement that has done so much for
plause). The little that I am, the little that I a
ing to be, is due wholly to the Socialist moveme
plause). It gave me my ideas and my ideals;
wouldn't exchange all of them for all of Rocke
blood-stained dollars (cheers). It taught me
serve—a lesson to me of priceless value. It tau
the ecstacy of the hand-clasp or a comrade. It
me to hold high communion with you; it made
for me to get in touch with you; to take my pla
by side with you; to multiply myself over and over
to make me thrill with a fresh-born manhood; t
life worth while; to open the avenues; to spread

glorious vistas; to know that I am akin with all that throbs; to become class conscious; to realize that, regardless of nationality, race, creed, color or sex, every man, every woman who toils, every member of the working class—every one of them—are my comrades, my brothers, my sisters—to serve them is the highest duty of my life. (Great applause.) And, in their service, I can feel myself expand; I rise to the stature of a man; I feel that I have a right to a place on earth—a place where I can stand and help to uphold the banner of industrial freedom and of social righteousness. Yes, yes; my heart is attuned with yours. Aye, all of our hearts are melted into one great heart that throbs responsive to the Social revolution.

Here, in this assemblage (applause) I hear our heart beat responsive to the Bolsheviki of Russia. (Deafening and prolonged applause.) Yes, those heroic men and women, those unconquerable comrades, who have, by their sacrifice, added fresh luster to the international movement. Those Russian comrades, who have made greater sacrifices, who have suffered more, who have shed more heroic blood than any like men or number of men and women anywhere else on earth, they have laid the foundation of the first real Democracy that ever drew (great applause) the first real Democracy that ever drew the breath of life on God's footstool (applause). And the very first act of that immortal revolution was to proclaim a state of peace with all the world, coupled with an appeal, not to the kings, not to the emperors, not to the rulers, not to the diplomats, but an appeal to the people of all nations (applause). There is the very birth of Democracy, the quintessence of freedom. They made their appeal to the people of all nations, the Allies as well as the Central powers, to send representatives to a conference to lay down terms of peace that should be Democratic and lasting. Here was a fine—here was a fine opportunity to strike a blow to make Democracy safe in the world (applause). Was there any response to that noble appeal? And here let me say that that appeal will be written in letters of gold in the history of the world (applause). Was there any response to that appeal? (From the crowd "No.") Not the slightest.

Why, it has been charged that Leon Trotsky a
leaders of the revolution were treacherous, tha
made a traitorous peace with Germany. Let us co
that proposition, briefly. At the time of the Rev
Russia had been three years in the war. Under th
she had lost more than four millions of her soldier
or mutilated on the field of battle. She was abs
bankrupt. Her soldiers were mainly without arms
was what the Revolution—what was bequeathed
Revolution by the Czar and his regime; and, for th
dition Leon Trotsky was not responsibe, nor the B
viki. For this frightful condition, the Czar was r
sible. When Trotsky came into power and went th
the archives, they found the secret treaties—the t
that were made betwen the Czar and the French g
ment and the British government and the Italian g
ment, proposing, after the victory was achieved, t
member and disperse and destroy the Central Po
These treaties have never been repudiated. Very
has been said about them in the American press. I
a copy of these treaties showing that the purpose
Allies is exactly the purpose of the Central Powers
plause). And that is the purpose that has always
the purpose of war.

Wars have been waged for conquest, for
der. In the middle ages the feudal lords,
inhabited the castles whose towers may still be
along the Rhine—whenever one of these feudal
wished to enrich himself, then he made war on the
Why? They wanted to enlarge their domains.
wanted to increase their power, their wealth, and so
declared war upon each other. But they did not
war any more than the Wall street junkers go to
(applause). The feudal lords, the barons, the econ
predecessors of the modern capitalist, they declare
the wars. Who fought the battles? Their mise
serfs. And the serfs had been taught to believe
when their masters declared and waged war upon
another, it was their patriotic duty to fall upon on
other, and to cut one another's throats, to murde
another for the profit and the glory of the pluto
the barons, the lords who held them in contempt.
that is war in a nut-shell. The master class has al
declared the war; the subject class has always fo

the battles; the master class has had all to gain, nothing to lose, and the subject class has had nothing to gain and all to lose including their lives (applause). They have always taught you that it is your patriotic duty to go to war and to have yourselves slaughtered at a command. But in all of the history of the world you, the people, never had a voice in declaring war. You have never yet had! And here let me state a fact—and it cannot be repeated too often: the working class who fight the battles, the working class who make the sacrifices, the working class who shed the blood, the working class who furnish the corpses, the working class have never yet had a voice in declaring war. The working class have never yet had a voice in making peace. It is the ruling class that does both. They declare war; they make peace.

"Yours not to ask the question why;
Yours but to do and die."

That is their motto, and we object on the part of the awakened workers.

If war is right, let it be declared by the people—you, who have your lives to lose; you certainly ought to have the right to declare war, if you consider a war necessary (applause).

Rose Pastor Stokes. And when I mention her name (applause), I take off my hat—mentally at least. (He spoke without a hat on his head.) Here is another heroic and inspiring comrade. She had her millions of dollars. Did it restrain her an instant? Her devotion to the cause had arrested all consideration of a financial or an economic nature. She went out to render her service to the cause in this day of crises, and they sent her to the penitentiary for ten years. Think of it! Ten years! What had she said? Not any more than I have said here this afternoon (laughter). I want to admit—I want to admit, without argument, that if Rose Pastor Stokes is guilty, so am I. If she is guilty, I wouldn't be cowardly enough to plead my innocence. And if she ought to be sent to the penitentiary for ten years, so ought I.

What did she say? Why, she said that a Government—a Government could not serve both the profiteers and the victims of the profiteers. Isn't that true? Certainly.

Roosevelt said a thousand times more in the same paper, The Kansas City Star. Roosevelt said, the other day, that he would be heard if he went to jail. He knows

very well that he will not go to jail. He is laying his wires for the Republican nomination in 1920. And he would do everything possible to discredit Wilson in his administration. He would do that in order to give himself and his party all of the credit. That is your wonderful rivalry between the two patriotic parties—the Republican party and the Democratic party, the twins. They are not going to have any agitation between them this fall. They are all patriots this time, and they are going to combine to prevent the election of any disloyal Socialists. I haven't heard anybody anywhere tell me of any difference between them. Do you know of any? Not the slightest. One is in, the other is out. That is all the difference there is between them (laughter).

Rose Pastor Stokes never uttered a word she did not have a legal, constitutional right to utter. But her message for the people, the message that opened the eyes of the people—that must be suppressed; her voice must be silenced. And so she was confronted with a mock trial, and sent to the penitentiary for ten years. Her sentence was a foregone conclusion. A trial in a capitalist court usually ends farcical—very farcical. What ghost of a chance had she in a court with a packed jury and a corporation tool on the bench? Not the least in the world. So she goes to the penitentiary for ten years, if they carry out the program. I do not think they will. In fact, I am sure they will not. If the war was over tomorrow, all of the prison doors would open.

They just want to silence this voice during the war. The cases will be appealed, and they will remain pending in court many a month, perhaps years. What a compliment it is to the Socialist movement for telling the truth. The truth will make the people free (applause). And the truth must not be permitted to reach the people. The truth has always been dangerous to the rule of the rogue, the exploiter, the robber. So the truth must be suppressed. That is why they are trying to drive out the Socialist movement; and every time they make the attempt, they add ten thousand voices proclaiming that Socialism has come to stay (applause).

(Here Mr. Debs is handed a drink of water.)

How good the touch of the hand of a comrade is, and a sip of water furnished by a comrade; as refreshing as if it were out on the desert of life. And how good it is

to look into your faces this afternoon (applause). You are really good looking (laughter), to me, I assure you. And, I am glad there are so many of you. Your tribe has increased wonderfully since I first came here (laughter). You used to be so few and far between. And when you struck a place, the first thing you had to do was to see if you could locate a Socialist; and you were pretty lucky if you struck his trail before you left town. If he happened to be the only one in town, and he is still living, he is now regarded as practical, and he holds the place of honor, and he has lodgment in the heart of all those who come after him. Now here you can't throw a stone in the dark without hitting a Socialist (laughter). They are everywhere in increasing numbers; and what marvelous changes are taking place.

I went to Warren some years ago. It happened to be at the time that President McKinley was assassinated. In common with all others, I deplored that tragic event. There is not a Socialist, who would have been guilty of that crime. We do not attack individuals. We don't wreak our vengeance upon any individual opposed to our faith. We have no fight with individuals. We are capable of teaching those who hate us (applause). We do not hate them; we know better; we would hand them a cup of water, if they needed it (applause). There is not any room in our heart for hate, except for a system—a system in which it is possible for one man to achieve a tremendous fortune doing nothing, while millions upon millions suffer and struggle and agonize and die for the bare necessities of life (applause).

McKinley had been assassinated. I was booked to speak at Portsmouth. All of the ministers of Portsmouth met in a special session, and they passed a resolution that Debs, more than any other person, was responsible for the assassination of our beloved President (laughter). And it is due to what he was preaching that was he responsible for this crime. And so all of these pious gentry, the followers of the meek and lowly, as they believed, met and said I must not be permitted to enter the city. And they had the mayor to issue an order not permitting me to speak. I was all tired out. And they wanted me to call the meeting off. I went there soon after, however. Soon after I was booked to speak at Warren, where President McKinley's double cousin was postmaster. I went there and registered. I was

only registered when I was ordered to leave the hotel. I was exceedingly undesirable that day. I was served with notice that the hall would not be open, and that I would not be permitted to speak. I sent back word to the mayor, by the only Socialist who was permitted to remain in town—and he only remained because they did not know he was there—I sent word to the mayor that I would speak in Warren that night, according to the schedule, or I would leave Warren in a box (applause).

I went to the hall, and the Grand Army of the Republic had a special meeting, and in full uniform they all went to the hall and occupied the front seats, in order to pounce upon me and take good care of me if my speech did not suit them. I went to the hall and made my speech. I told them who was responsible for the assassination. I said: "As long as there is misery caused by robbery at the bottom, there will be assassination at the top" (applause). I showed them that it was their capitalist system that was responsible; that impoverished and brutalized the ancestors of the poor, witless boy who murdered the President. Yes, I made the speech that night. When I left there I was still very undesirable.

I returned some years thereafter. It seems that the whole population of Warren was out. I was received with open arms (applause). I was no longer a demagogue; I was no longer a fanatic; I was no longer an undesirable. I had become exceedingly honorable simply because the Socialists had increased in numbers and in power. Consequently, I had become something respectable—what a change, from poor respectability! If ever I become anything more respectable, I will be quite sure that I have outlived myself (laughter).

Oh, it is the minorities who have made the histories of this world! They who have had the courage to take their places at the front; they who have been true enough to themselves to speak the truth that is in them; they who have opposed the established order of things; who have espoused the cause of the suffering, struggling poor; who have upheld, without regard to personal consequences—who have upheld the cause of righteousness; they have made the history; they have paved the way to civilization. Oh, there are so many who remain upon the popular side. They lack the courage to join a despised minority; they lack the fiber that endures. They

are to be pitied, and not treated with contempt; they cannot help it. But, thank God, in every age and every nation there have been that few, and they have been sufficient; and they have lived; they have endured; and we, who are on earth today, are under obligation to them, because they suffered, they sacrificed, they went to jail; they had their bones broken upon the wheel; they were burned at the stake, and had their ashes scattered to the four winds by the hands of hate. We are under obligation to them, because of what they suffered for us; and the only way we can cancel that obligation is by doing or seeking to do in the interest of those who are to come after us (applause).

And this is the high purpose of every Socialist on the face of the earth. Everywhere they are animated by the same lofty principle; everywhere they have the same noble ideal; everywhere they are clasping hands across the boundary lines; everywhere they are calling one another comrades, the blessed word that springs from the heart and soul of unity; that bursts into blossom upon the lips; aye, the word "comrade"—getting in closer touch all along the battle line; and they are waging the war—the war of the working class of the world against the ruling class, the exploiting class of the world. They make mistakes; they profit with them all; we encounter defeats; they grow—they grow stronger through them all. They never take a backward step; the heart of the international Socialist never beats retreat; they are pushing forward (applause). They are pressing forward, here, there, everywhere, in all of the zones that girdle this globe; everywhere these awakening workers, these class-conscious proletarians, these horny-fisted children of honest toil, everywhere wiping out the boundary lines; everywhere facing the larger and nobler patriotism; everywhere proclaiming the glad tidings of the coming emancipation; everywhere having their hearts attuned to the most sacred cause that ever challenged men and women to action in all the history of the world. Everywhere moving toward Democracy; everywhere marching toward the sunrise, their faces all aglow with the light of the coming day. These are the Socialists; these are the most zealous, the most enthusiastic crusaders the world has ever known (applause). They are making history that will light the horizon in the coming generations; they are bound upon emancipating the human

race. They have been reviled; they have been persecuted; but they have been sufficient to themselves, pressing forward toward the height—aye, their triumph is now already begun.

Do you wish to hasten it? Join the Socialist party. Don't wait for the morrow. Come now (applause). Enroll your name; take your place where you belong. You cannot do your duty by proxy. You have got to do something yourself, and do it squarely, and look yourself in the face while you are doing it; and you will have no occasion to blush; you will know what it is to be a man or woman. You will lose nothing; you gain everything (applause). Not only do you not lose anything, but you are very apt to find something, and that something will be yourself. And you need to find yourself (applause). You need to know that you are fit for something better than slavery and cannon fodder (applause). You need to know that you were not created to work and to produce to impoverish yourself and to enrich an idle exploiter. You need to know that you have a soul to develop, a manhood to sustain. You need to know that it is your duty to rise above the animal plane. You need to know that it is for you to know something about literature, and about science, and about art. You need to know that you are on the edge of a great new world. You need to get in touch with your comrades; you need to become conscious of your interest and your power as a class. You need to know that you belong to the great majority. You need to know as long as you are ignorant, as long as you are indifferent, as long as you are content, as long as you are unorganized, you will remain exactly where you are (applause). You will be exploited; you will have to beg for a job; you will get just enough to keep you in working order; and you will be looked down upon with contempt by the very parasite that lives out of your sweat and unpaid labor. If you would be respected, you have got to begin by respecting yourself (applause). Stand up, and look yourself in the face, and see a man for the first time. See how he looks, please.

Do not be in the predicament of that poor fellow that after he had heard a Socialist speak, he concluded that he ought to be a Socialist. The argument was unanswerable. He said: "Yes. All he said is true. I ought to join the party." But, after while he concluded

that he might possibly anger the will of his old boss, and lose his job. He said: "I guess I can't afford to take the chance." That night he slept alone. He was in conflict with his conscience, as he went to bed; and he dreamed a very terrible dream. Men always do when they are untrue to themselves. Socialists always go to bed with a clear conscience. He goes to sleep with his manhood, and he wakes and goes forth in the morning with his self-respect; and he looks the whole face in the world (applause and laughter), without a tremor, without a flicker. But this poor fellow, who lacked the courage to do what his reason and his conscience commanded he should do—this poor fellow had a terrible dream. He awoke, and at midnight he bounded from his bed in a state of terror, for he said: "My God, there is nobody in this room." (Laughter.) And he was absolutely right (laughter and applause). No one! He was terror-stricken. How would you like to sleep in a room with nobody in it? (Laughter.) It is an awful thing to be nobody. That is a state of mind to get out of—the sooner the better.

There is a great deal of hope for Baker, Ruthenberg and Wagenknecht, but for the fellow that is nobody, there is no pardoning power. He is "in" for life. Anybody can be nobody, but it takes a man to be somebody.

To turn your back on that corrupt Republican party, and that still more corrupt Democratic party—the gold-dust boys of the ruling class (laughter), yes, it counts for something. To step out of those great, popular, subsidized capitalist parties, and get into a minority party that stands for a principle, and fights for a cause (applause). Make that change; it will be the most important change you have ever made in your life; and you will thank me to your dying day—or living day—a Socialist never dies—you will thank me for having made the suggestion. It was a day of days for me. I remember it so well. I passed from darkness to light. It came like a flash, just as great, seething, throbbing Russia, in a flash, was transformed from the land of supreme darkness to a land of living light. There is something splendid in the prompting of the heart to be true to yourself, especially so in a crisis.

You are in the crucible today, Mr. Socialist. You are going to be tried, to what extent no one knows. If you are weak-fibred, that weakness will be sought out, and

located. And if, through that weakness, you ar
quered, you may be driven out of the Socialist
ment. We will have to bid good-bye to you. Y
not the stuff of which Revolutionists are made. W
sorry for you (applause), unless you happen to
intellectual. The intellectuals, a good many of
are already gone. No—no loss on our side, nor an
on theirs.

But, when discussing the intellectual phase o
question, I am always amused by it. It is the sam
standard under which the rank and file are judge
fail to depend upon leaders of men—of others, be
they haven't got a thing of their own. What woul
come of the men that are sheep unless they had
herds to lead them out of the wilderness into the
flowing with milk and honey? Oh, yes, "Ye ar
sheep." In other words, "Ye are my mutton." (L
ter.) And, if you had no intellectuals you could
no movement. They rule through their intellectua
the capitalistic party. They have their so-called lea
In the Republican and Democratic party you ar
called upon to think. That is wholly unnecessary.
leaders do the thinking. You simply do the voting.
ride in the carriages, and you tramp in the mud, b
ing up the rear, showing themselves cowards.
tend to the rest of the intellectuals in the capitalist p
The capitalist system affects to have great regard
intellect. They give themselves credit for having
perior brains. We used to tell them sometime ago
the time would come when the working class would
They said: "Never in the world will they rule. I
quires brains to rule." Implying that the workers
none.

We used to say that the people ought to own the
roads and operate them for the benefit of the pe
We advocated that twenty years ago. They said: "
have got to have brains to run the trains." And
other day McAdoo fired all the brains (laughter).
haven't all the trains been coming and going exactl
time? Have you noticed any change since the br
are gone? It is a brainless system now. It is oper
by hand (laughter). But a good deal more efficie
than it was operated by brains before (laughter).
this determines infallibly the quality of capitalist br
It is the kind of brains you can get at a very rea

able figure at the market houses. There is not very much question about it. They have always given themselves credit for having superior brains. Aye, they have the brains of the fox; they have the brains of the wolf; they have had the shrewdness, the cunning of the coyote; but as for brains—brains, as representing intelligence and intellectual capacity, they are the most woefully ignorant people on the face of the earth. Give me a hundred capitalists, just as you find them here in Ohio—give me my pick of this plutocracy, and let me ask them a dozen simple questions about the history of their country, and I will show you that they are as ignorant as unlettered schoolboys (applause). They know nothing of history; they are ignorant of sociology; they are strangers to science; but they know how to gouge; how to rob, and do it legally. And they always do it legally, for the reason that the class which has the power to rob, upon a large scale, has the power to control the government and legalize their robbery. I haven't time to discuss this great question as extensively as I would like.

They are talking about your patriotic duty. Among other things, they are advising you to cultivate war gardens—cultivate a war garden. While they are doing this, a Government war report shows that practically fifty-two per cent. of the arable tillable soil is held out of use by the profiteers, by the land manipulators—held out of use. They, themselves, do not cultivate it. They could not if they would. They don't allow others to cultivate it; they keep it idle to enrich themselves; to pocket the hundreds of dollars of unearned increment. Who is it that makes their land valuable while it is fenced in and kept out of use? It is the people. Who pockets this tremendous value? The landlords. The landlords. Who is the patriot? And while we are upon the subject, I want you to think upon the term "land-lord." Landlord. Lord of the land ? This lord of the land is a great patriot. This lord, who professionally owns the earth, tells you that he is fighting to make the world safe for Democracy—he, who shuts all humanity out—and he who profiteers at the expense of the people who have been slain by multiplied thousands, under the pretense of being the great patriot he is—he, who is your arch-enemy; he it is that you need to wipe from power (applause). It is he, it is he that is a menace to your

loyalty and your liberty far more than the P
junker on the other side of the Atlantic ocea
plause). Fifty-two per cent., according to the
figures. They tell you that there is a shortage
and that you need to produce. We have got
wheat that we can export more wheat for the
who fight on the other side, while half of your
soil is held out of use by the profiteers. What
think of that?

Again, they tell you there is a coal famine now
State of Ohio. The State of Indiana, where I
largely underlaid with coal. There is an inexha
supply of it. The coal is beneath our feet. It is
touch—all that we can possibly use. And here a
miners; they are ready to enter the mines. There
machinery ready to be put into operation to in
the output to any desired capacity. And yet, only
weeks ago a national officer of the United Mine W
issued and published an appeal to the Labor Depa
of the United States Government to the effect t
the six hundred thousand coal miners in the
States at this time, when they tell us of a coal f
—the six hundred thousand coal miners in this c
are not permitted to work more than half time.
been around over Indiana. I have been in the coal
I have seen the miners idle. In the meantime, se
of coal. They tell you that you ought to buy you
right away. You may freeze to death next winter
do not; and they charge you three prices for coal
yes, I think you ought to do this if you vote the Re
can or Democratic ticket (applause). Now we hav
vate ownership of the coal mines. And this is the
of private ownership of this great social utility.
coal mines are privately owned, and the operators
a scarcity of coal. Why? So they can boost the
indefinitely. If there was an abundance of coal,
would be too much coal. They make more mone
of the scarcity of coal. So there is collusion betwe
operators and the railroads. The operators say
are no cars, and the railroad men say no coal.
between them they simply humbug, delude, defrau
people.

There is the coal. Here are the miners.
coal has accumulated; the miners are idle and hu

We Socialists say: Take possession of the mines in the name of the people (applause). Set the miners at work; give every miner that works all the coal he produces. In this system the miner goes down in a pit three hundred feet. He goes to work and mines a ton of coal. He doesn't own one solitary bit of it. That ton of coal belongs to some plutocrat who lives in New York, Vienna or Paris. There is where the owners are before the war is declared. Then when they get together on their book accounts, he gets a share as if he did the work. The owner who lives in Europe, New York or Patagonia—it doesn't make any difference where he is. He doesn't have to keep at the work. He owns the tools, and he might as well own the miner. That is what you do for them as long as you vote the Republican ticket or the Democratic ticket. You vote to have these miners without a job—corporation vassals and also paupers. But I'll tell you we Socialists say: Take possession of the mines; call the miners to the coal mines. Let the miners mine the coal—every ounce. He himself is entitled to the full value of his toil. Then he can build himself a comfortable home; live in it; enjoy it; he can provide himself and his wife and children with clothes—good clothes—not shoddy; wholesome food in abundance, and the people will get coal at just what it costs to mine it.

Oh, that is Socialism as far as it goes. But you are not in favor of that program. It is too visionary. So continue to pay three prices for coal, and get your coal when winter comes, because you prefer to vote the capitalist ticket. You are still in the capitalist state of mind. It is a good deal like the Executive Lincoln said: "If you want that thing, that is what you will get to your heart's content." You will waken up; you will be raised up. A change is needed. Yes, yes. Not of party, but change of system: a change from despotism to Democracy, wide as the world (applause). A change from slavery to freedom! A change from brutehood to brotherhood; and to accomplish this you have got to organize; and you have got to organize industrially. Not along the zig-zag, craft lines laid down by Sam Gompers, who, through all of his career, has been on the side of the master class. You never hear the capitalist press speak of him except in praise and adulation. He has become a great patriot. Oh, yes. Gompers, who was never on the unpopular side

of any question or of any proposition; always co
tive, satisfied to leave the labor problem to be se
the banquet board with Elihu Root, Andy Carneg
the rest of the plutocrats. When they drank w
gether and smoked scab cigars, then the labor q
was settled (laughter).

Oh, yes, while they are praising Gompers, t
the I. W. W. You find very few men who have th
age to say a word in behalf of the I. W. W. (app
I have (applause). Let me say here that I hav
great respect for the I. W. W. More than I ha
their infamous detractors (applause).

Listen. There is a pamphlet just been issued
"The Truth About the I. W. W." It has been
after long investigation by five men, all of who
known to the Socialists; all of whom are men of u
tioned standing in the capitalist world. At the h
this is Prof. John Graham Brooks of Harvard U
sity; John Fitch of the Survey, of Pittsburgh, an
Bruere, the Government investigator. Five of
conducted an impartial examination of the
W. To use their own words, they have fol
its trail; they have examined into its doing
ginning at Bisbee, where the patriots, the
business men, the arch-criminals, deported
hundred men, working men, charging them with
I. W. W., when they were nothing of the kind. It i
necessary to label a man "I. W. W." to have
lynched, just as they lynched Praeger, an absolute
nocent man—innocent as we are. Just simply starte
rumor because he bore a German name. He was
cialist, but he had never uttered one disloyal w
only the rumor was started he was disloyal, whic
made up. Just think of the crime for which the
capitalist party is responsible. But, when the war
says war, you may rest assured that every pulpit i
land will say war. And when Wall street says
they will all say peace, because they are simply t
struments of Wall street. The pulpits in every age
been on the side of every ruling, exploiting clas
the ruling class, and not on the side of the people.
is why the I. W. W. is infamous.

Look into this pamphlet. Don't take the word
Wall street press for that. Get this pamphlet of

about the I. W. W. by five men who are incorruptible, uncontaminated—five men who dared to want to know the truth and tell the truth to the American people, with the truth in this pamplet. They say that the I. W. W. in all of its career never committed as much violence against the ruling class as the ruling class has committed against the I. W. W. (applause).

You are not reading any reports about the trial at Chicago, are you? They used to publish extensive reports when the trials first began, and they told the people about what they proposed to prove about that gigantic conspiracy against the Government. And the trial has gone on now until they have exhausted all their testimony, and they have not proven violence in a single, solitary instance. Not one. They are utterly lacking in testimony; and yet, one hundred and twelve men are now on trial, after lying in jail for months and months, without the shadow of a crime on them—simply charged with belonging to the I. W. W. This is enough to take a man and send his soul to hell for. Just speak about the I. W. W. That is all; with no reason for it, they object to the I. W. W. The I. W. W. are fighting the fight of the bottom dog (applause). And for the reason that Gompers is loved and glorified by Wall street, Bill Haywood is despised and denounced by the same gang.

What you need is to organize, not along craft lines, but along revolutionary industrial lines (applause). You will never vote in the Socialist republic. You are needed to organize it; and you have got to organize it in the industries—unite in the industries. The industrial union is the forerunner of industrial Democracy. In the shop is where the industrial Democracy has its beginning. Organize according to the industries, and minimize all the Gompers. Get together. United, very often your power becomes invincible. Organize to get up to your fullest capacity. Organize. Act together. And when you organize industrially, you will soon learn that you can manage industry as well as operate industry. You can soon find that you don't need the idle for your masters. They are simply parasites. They don't give you work. You give them jobs taking what you produce, and that is all. Their function is to take what you produce. You can dispose of them. You don't need them to depend upon for your jobs. You ought to own

your own tools; you ought to control your ow
ought to be industrial free men instead of
slaves. Organize industrially. Make the o
complete. Then unite in the Socialist party.
organization economically complete. Vote as
get into the party; stand with the party all
in the year. See that your party embraces t
class. It is the only working class party, the
expresses the interest, the hope, the aspirati
toilers of the world. Get into the party. Ge
low workers into the party, too. Yes, espe
year—this historic year; this year in which
will clash as they never clashed before. This
that calls for men and women who have the
have the courage, the manhood and the woman
into the party. Take your place in the ranks
inspire the weak and to strengthen the falteri
your share to speed the coming of that bri
better day for us all (applause). Then, whe
together and act together on the industrial
will develop the supreme power of the one clas
bring permanent peace to the world. We wil
courage. Industry will be organized. We wi
the public power. We will transfer the title
the railroads, the telegraph lines, the mills,
industries—we will transfer them to the peopl
take possession in the name of the people. We
industrial Democracy. We will have Socialis
racy; we will have political Democracy. We w
first free nation whose government belongs to t
Oh, this change will be universal; it will be pe
it looks towards the light; it paves the way t
pation.

And now for all of us to do our duty. The ca
ing in our ears. It is your duty to respond;
cannot falter without being convicted of treaso
selves. Do not worry, please; don't worry
charge of treason to your masters, but be
about the treason that involves yourselves (a
Be true to yourself, and you cannot be a trait
good cause on earth.

Yes, we are going to sweep into power in th
and in every other nation on earth. We are
destroy the capitalist institutions; we are goi

create them as legally free institutions. Before our very eyes the world is being destroyed. The world of capitalism is collapsing; the world of Socialism is rising.

It is your duty to help to build. We need builders of industry. Builders are necessary. We Socialists are the builders of the world that is to be. We are all agreed to do our part. We are inviting—aye, challenging you this afternoon, in the name of your own manhood, to join us. Help do your part. In due course of time the hour will strike, and this great cause—the greatest in history—will proclaim the emancipation of the working class and the brotherhood of all mankind. (Thunderous and prolonged applause.)

* * * * * *

2. Count 4 (42-55) charges that defendant did obstruct and attempt to obstruct the recruiting and enlistment service of the United States. The making of the speech, and other averments are the same as before, except that the ages of hearers particularized is 18 to 45.

3. Count 7 (82-95), reciting the same facts, and again alleging hearers between 21 and 30, charges that the defendant did "unlawfully, wilfully and feloniously utter and publish certain language intended to incite, provoke and encourage resistance to the United States, and to promote the cause of its enemy, to wit: The Imperial German Government."

Aside from the introduction of the Canton speech, most of the time of the trial was consumed in reading into the record the war proclamation issued by the Socialist Party in April, 1917, usually designated as the St. Louis Platform (218, Exhibit II); also the records of criminal prosecutions against Wagenknecht, Baker, Ruthenberg (226, Exhibits 9, 10, 11, 12 and 13), Rose Pastor Stokes (227, Exhibit 14), and Kate Richards O'Hare (228, Exhibit 15), and a speech made by Mr. Debs in Chicago on August 11, 1918 (220-223).

No witnesses were called for the defense. Mr. Debs made the only argument in his own behalf (236-248).

Counsel for Mr. Debs, proceeding upon this simple record, are conscious of an obligation to present the appeal to this court in entire harmony with the spirit and purpose of the defense in the trial court. The defendant comes before this court like any other person charged with crime, and his attorneys are under duty to this court to call attention to such manifest errors upon the trial as have thwarted the established requirements of a criminal proceeding. Yet in urging upon this court the several matters which we consider as highly prejudicial error against Mr. Debs in his trial, we hope in no way to give the least impression of altering his firm stand upon his public expressions as within his right of free speech under the Constitution.

Specification of Errors.

We shall urge errors committed by the trial court to the prejudice of the defendant, as follows:

1. Overruling the demurrer to the indictment. The indictment fails to state an offense for the several reasons that:

(a) It states only conclusions of law in the language of the statute and makes no connection between these averments and the speech of the defendant, leaving this connection entirely to conjecture and argumentative inference;

(b) It proceeds upon the erroneous assumption, in counts 3 and 7, that all citizens between the ages of 21 and 30 are part of the military forces of the United States; and, in count 4, that all citizens between the ages of 18 and 45 are part of the recruiting service;

(c) *It states no charge and sets forth no language, no matter how aided by inference or deduction, which could bring the speech of defendant within the purview of Congressional penal legislation under the powers granted to Congress in the Constitution.*

2. The trial court erred in admitting as testimony a partial court record of criminal proceedings against Wagenknecht, Baker and Ruthenberg (226).

3. The trial court erred in admitting court records in the criminal prosecution against Rose Pastor Stokes.

4. The court erred, likewise, in admitting the records in the case against Kate Richards O'Hare.

5. Admission of portions out of two interviews, between witness Clyde Miller and the defendant, referring to the St. Louis Platform (166-175; 218-220).

6. Admission of the St. Louis Platform as testimony, erroneous because in no way connected with the making of the speech upon which the charges are founded, and immaterial and improper upon the issue of the criminal intent involved in the making of the Canton speech, which does not directly or inferentially adopt or refer to this document, or in any way bring its text to the consciousness of the hearers.

7. The court erred in admitting as evidence part of a speech said to have been made in Chicago, August 11, 1918, irrelevant and improper to prove the intent involved in the making of the speech at Canton on June 16th.

8. Error in refusing to direct a verdict of acquittal on each and every count of the indictment, because there was no evidence of any solicitation or urging of unlawful conduct on the part of others by the defendant, and because on no other basis could defendant's utterances

come within the constitutional power of Congress to prohibit or punish expressions of opinions and sentiments.

9. Error in the instructions of the trial judge as to those persons who make up *the military and naval forces* and *the recruiting service* of the United States (268, 270).

10. Error in the instructions as to the range of public discussion immune from Congressional interference under the First Amendment of the Constitution (278-279).

11. Error in the instructions (278) in declaring constitutional the clause of the Espionage Act upon which count 7 is based, namely, "whoever, when the United States is at war * * * shall wilfully utter, print, write, or publish any language intended to incite, provoke or encourage resistance to the United States, or to promote the cause of its enemies * * * shall be punished, etc." Which said clause is obnoxious to the First Amendment, prohibiting legislation abridging the freedom of speech, or of the press; obnoxious to section 3 of article III, limiting the definition of treason against the United States; obnoxious also to the provision in the Sixth Amendment (relating to the due process of law guaranteed to one charged with crime by the Fifth Amendment) which requires that accused shall be informed of the nature and cause of the accusation, and which requirement cannot be fulfilled in application to a penal provision of such extreme indefiniteness as the one in question.

Points.

The argument on the errors above set forth will be made under five headings, as follows:

I. The indictment fails to charge a crime.

II. Admission of court records in other criminal proceedings.

III. Admission of St. Louis Platform.

IV. Definition of *military forces* and *recruiting service.*

V. The acts charged against defendant are protected under the First Amendment of the Constitution.

I.

THE INDICTMENT FAILS TO CHARGE A CRIME.

The primary argument under this heading is carried over to the general discussion of the right of free speech under a subsequent heading of the brief. At this point we desire merely to call attention to the fictitious character of the pleading as pleading.

We have already summarized the three counts of the indictment with which we are here concerned. In each case there is the array of averments in the language of the statute and reference to the speech in its entirety. There is only a statement of crime by mere formulas of words, not a definition by facts. Whatever connection may exist between the formal averments and the speech is matter of inference or speculation. There are no conclusions of fact, based upon the speech or other matter. There is absolutely nothing in the indictment upon which a rule of the case could be founded, short of the proposition that the general array of words set forth,

addressed to a stated audience at a stated time and place constitutes a violation of the Espionage Act. The time is specified as a time when the United States was at war and the audience as containing young men of certain ages. The relation of the speech to these items, or to the general (statutory) averments, is ignored. This pleading we challenge under the general rule, as stated by Justice Story in *United States* v. *Davis*, 5 Mason 356, that "in criminal cases courts of law are not at liberty to make intendments and inferences to support indictments, in the same manner as they may do to support civil actions."

The case of *United States* v. *Bopp et al.*, 230 Fed. 723, is decisive of this point. The *Bopp* case, disposed of on demurrer, was a charge of conspiracy to organize a military enterprise against a foreign nation, and the decision was that acts were not set forth which made specific the crime alleged. Even though a charge was made in the precise words of the statute itself, this was not a sufficient description of a charge to organize a "military enterprise." The definition of such an enterprise, in concrete terms, must appear as the effect of the indictment, not as its conclusions of law, nor yet as its bare repetition of the statutory definition of the crime. It is only when the language of the statute itself contains the definition *in terms of acts* that it is alone sufficient. Adding the speech made at Canton to the abstract averments in the three counts here in question does not define the crime, unless it be further alleged in what respect the speech and other items combine toward a criminal end.

The crime must be fully described, not by intendment or implication, not inferentially or by way of recital, but directly and completely, so that the criminal purpose is plainly revealed. It is not a general intent which will

suffice, but the specific intent to achieve the crime set out. There must be a direct connection made clear between the intent to violate the statute and acts consummated or in process, not by legal conclusions of the pleader, but by the logical resultant of the sum total of the material of the indictment. The charge must rest in the facts and circumstances pleaded directly and positively, and cannot be made to depend upon inference and argument, as in the indictment which we challenge. *Pettibone* v. *United States*, 148 U. S. 197; *United States* v. *Hess*, 124 U. S. 483; Bishop's New Crim. Prac., Vol. I, Sec. 325; also, Vol. II, Sec. 779.

To state this another way, and taking the indictment in its original form for the sake of illustration, are there really ten different applications of the speech, or merely the lining up of charges in ten phases of the statute alongside the speech? Now this would seem to be proper pleading of the speech as an offense *per se, of the language as the criminal act when accompanying an allegation of publication.* But the theory of the speech *as relating itself to acts of others* is not revealed by setting out the text of the speech together with conclusions in statutory language of the kind here in question.

The rule of strict application of penal statutes is applicable to the situation here presented. Especially is this pertinent to a new offense (*Field* v. *United States*, 137 Fed. 6), and to a statute involving a change in our traditional policy in relation to public discussions. *Masses Pub. Co.* v. *Patten*, 244 Fed. 535.

We cite further the ruling and opinion of Judge Amidon in *United States* v. *Schutte*, 252 Fed. 213, wherein also appears the language of the Supreme Court of Minnesota in *State* v. *Spartz*, 167 N. W. 547. We go further than Judge Amidon, however, since the language of his

opinion would seem to make it sufficient if the plead sets out the words *so that the court can pass upon the* Presumably that is the process by which the trial jud eliminated several of the counts of the indictment he in question. Suppose then we proceed on this bas The proposition is that the trial judge sustains the oth counts upon the theory that by reasonable inference t language uttered by the defendant might be held appr priate to the wilful purpose alleged. On the other han what we contend is that *the connection between the la guage and the purpose ought to form part of the indic ment,* so that the defendant may be enlightened, and n alone that the judge may have the materials for his ru ing upon the indictment.

In short, there is in this pleading a speculative el ment, an invitation for inferences to go along with th abstract averments. We are asked to search the speec ten different times for possible applications to ten di ferent offenses, the pleader standing aside in favor c conclusions of fact to be made by the court, and th court, and then the jury, proceeding to these conclusion in privacy of consciousness never revealed to the defend ant, except in form of ruling and verdict. The elemer tary principles of pleading in defamation, where word carry the offense, would be violated by giving the word without a theory of their injury. Assuredly the require ments of pleading a felony cannot be satisfied by leav ing a gap for guesswork, wherein the trial judge and th jury may arrive at the same point by processes of rea soning extremely divergent, and the rule of the case, a tested by the indictment, may go to nothing except s speech as an entity—when it is not the speech as lan guage, but as motivation to action, which constitutes th charge.

II.

ADMISSION OF COURT RECORDS IN OTHER CRIMINAL PROCEEDINGS.

In the speech upon which the several charges proceed, Mr. Debs referred to Wagenknecht, Ruthenberg and Baker, who were confined in the workhouse at Canton. We repeat the references to these men made by Mr. Debs:

> "I have just returned from a visit over yonder (pointing to workhouse) where three of our most loyal comrades are paying the penalty for devotion to the cause of the working class. They have come to realize as many of us have, that it is extremely dangerous to exercise the constitutional right of free speech in a country fighting to make democracy safe in the world. * * * And they may put those boys in jail and some of the rest of us in jail, but they cannot put the Socialist movement in jail. Those prison bars separate their bodies from ours, but their souls are here this afternoon. They are simply paying the penalty that all men have paid in all of the ages of history for standing erect, and for seeking to pave the way to better conditions for mankind. If it had not been for the men and women, who, in the past, have had the moral courage to go to jail, we would still be in the jungles. * * *
>
> Those boys over yonder—those comrades of ours—and how I love them—aye, they are my younger brothers; their very names throb in my heart, and thrill in my veins, and surge in my soul. I am proud of them. They are there for us, and we are here for them. Their lips, though temporarily mute, are more eloquent than ever before; and their voice, though silent, is heard around the world.
>
> There is a great deal of hope for Baker, Ruthenberg and Wagenknecht, but for the fellow that is nobody, there is no pardoning power. He is 'in' for life. Anybody can be nobody, but it takes a man to be somebody. * * *"

On the basis of this reference by Mr. Debs to three persons, a partial record of criminal proce against them (in this same court) was introduced objection. The clerk of the court identified the re and the prosecuting attorney read them to the jury. indictment against these persons was for a violati an Act of Congress approved May 18, 1917, requ registration for military service of persons desig as subject to draft, in that they aided and abetted s one in his refusal to register.

There is not a word in the speech of Mr. Debs w suggests approval, or even knowledge on his own of the criminal offense for which these three men convicted. There is not a word by which he brings knowledge to his hearers, or in any way holds up acts charged against these men as an example or st ard of conduct for others.

The defendant spoke also of Rose Pastor Stokes. said:

> "Another brief history I want to review is tha Rose Pastor Stokes, another inspiring comrade. had her millions of dollars. Her devotion to cause is without all consideration of a financial economic view. She went out to render service the cause and they sent her to the penitentiary ten years. What has she said? Nothing more t I have said here this afternoon. I want to say t if Rose Pastor Stokes is guilty, so am I. If should be sentenced to the penitentiary for ten ye so ought I. What did she say? She said tha Government could not serve both the profiteers a the employes of the profiteers. Roosevelt has s a thousand times more in his paper, the Kansas C Star. * * *
>
> Rose Pastor Stokes never said a word she did have a right to utter, but her message opened eyes of the people. That must be suppressed. T voice must be silenced. Her trial in a capita

court was very farcical. What chance had she in a corporation court with a put-up jury and corporation tool on the bench?''

The trial judge, over objection, permitted the Government to introduce the indictment, verdict and sentence against Rose Pastor Stokes, who was tried May, 1918, in the District Court for the Western District of Missouri, on charges under the Espionage Act. Since the printed record does not set out this indictment, we refer here to the quotation from this indictment as used by the District Attorney in his argument (261):

> ''Here is what Rose Pastor Stokes said—you heard the record—for which she got ten years: 'A headline in this evening's issue of the Star reads: ''Mrs. Stokes for Government and Against War at Same Time.'' I am not for the Government.' She says that she is not for the United States. Eugene V. Debs says to you, 'I am with Mrs. Stokes.' That means 'I am not for the United States.' Doesn't it?
>
> Gentlemen, there is a great war on. This man is charged with the crime of violating the Espionage Act. It is competent to show what he intended to do, what he had in mind, what his purpose was, when he made his speech down there. 'I am not for the Government. I am reported as having said ''I believe the Government of the United States should have the unqualified support of every citizen in its war aims.'' You and I believe that, don't we? A citizen of this country that don't believe in that ought to be driven out of it, or not be permitted to run around loose. I made no such statement, and I believe no such thing. No government which is for the profiteers can also be for the people, and I am for the people, while the government is for the profiteers.' ''

And of Kate Richards O'Hare he said:

> ''Why, the other day they sent Kate Richards O'Hare to the penitentiary for ten years. Just think of sentencing a woman to the penitentiary for talking. The United States, under the rule of plu-

tocracy, is the only country that would
woman to the penitentiary for exercising
stitutional right of free speech. If this be
let them make the most of it. Let me revie
the history in connection with this case.
known Kate Richards O'Hare intimately
years. I know her record by heart. Pers
know her as if she were my own sister.
know her know she is a woman of absolut
rity. And they know that she is a woman
peachable loyalty to the socialist movement.
she went out into Dakota and made her s
followed by plain-clothes men in the servic
Government, intent upon encompassing he
and her prosecution and her conviction—w
was out there, it was with the knowledge that
or later they would accomplish their purpos
made a certain speech, and that speech wa
erately misrepresented for the purpose of s
her conviction. The only testimony against
that of a hired witness. And when 30 farme
and women, who were in the audience she ad
—made the speech to, when they went to Bi
to testify in her favor, to swear that she ha
used the language she was charged with
used, the judge refused to allow them to go
stand."

Similarly, over objection, the trial court permit
Government to introduce the indictment against
Richards O'Hare, the verdict of guilty returned
jury and the judgment and sentence of the court th
Mrs. O'Hare was tried under the Espionage A
cember, 1917, in the District Court for the Dist
North Dakota. For the substance of this indictm
refer again to the argument of the District At
(262):

"Kate Richard O'Hare, in a public meetin
that 'any person who enlisted in the army
United States for service in France would b
for fertilizer, and that is all that he was goo
and that the women of the United States were

> ing more nor less than brood sows to raise children to get into the army and be made into fertilizer.' The record shows that she was found guilty by 12 men, and is under sentence for that offense; so we must assume that it is true. And Debs wants to take his place alongside of her. How much favor ought a man of that kind have in a court of justice, or in any court? If it was any other country in the would he would be facing a firing squad, after a trial on the head of a drum, and not after days of pain and effort to give him a fair, just and equitable trial."

It will be observed from the foregoing that nothing in the address of Mr. Debs, or in any other matter disclosed in the evidence, indicated that he or anyone who heard him speak on June 16th, had knowledge of the charges contained in these several pleadings against Wagenknecht, Ruthenberg, Baker, Kate Richards O'Hare, or Rose Pastor Stokes. That is, there was no showing of knowledge as to these charges, except as carried in the words of the Canton speech standing by itself. There was no basis whatever for an inference that the speaker intended to approve or indorse the offenses with which these persons were charged; nor that he was holding up these offenses as a standard of conduct for others (as was discussed in *Masses Publishing Co.* v. *Patten*, 244 Fed. 535; 246 Fed. 24). In fact, the defendant, by his own statement of the facts, as he understood them, shows conclusively that he had no knowledge of the specific criminal offenses of which these persons were found guilty.

The prejudicial character of this evidence is manifest when it is considered that there was no possibility of meeting it except by evidence relating to these charges against other persons. The introduction of these records raised a collateral issue which there was no way of meeting, and the effect was to impress the jury that

the defendant was admitting against himself t
charged in these indictments. There was no w
possibility in this trial to review these other c
there was no warrant or relevancy in permi
jury to pass upon these records for the pu
determining the intent of Mr. Debs in present
names to his hearers at Canton.

A striking tangent as to two of these records
the cases were pending on appeal, namely, the
Kate Richards O'Hare and Rose Pastor Stok
true the writ of error only suspends judgme
the reversal of either of these cases, assuming
that Mr. Debs referred to the charges as such
the individuals on the basis of long-cherished
regard—the reversal might establish the corre
a legal inference of innocence, while this actio
reviewing court would be unavailing to the de
who had made such inference contrary to the in
and conviction.

In an indirect way, there was an attempt here
by other proceedings other offenses of the de
than that with which he was charged. There
effect of making him a party to the charges a
established against five other persons, and of
him in Fargo, Kansas City and Cleveland un
onus of proved criminality.

To make more emphatic the vice of admitti
testimony on the issue of intent, we call attentio
rules as to the admissibility of evidence of othe
committed by the same defendant. The gener
against the admissibility of such evidence is clai
set forth in an annotation in 62 L. R. A. 193, to t
ing case of *People* v. *Molineaux*, 168 N. Y. 264. F
abundance of authorities under this heading we c

ticularly *State* v. *O'Donnell,* 36 Or. 222; *Davis* v. *State,* 54 Neb. 177; *People* v. *White,* 14 Wend. 112; *People* v. *Flanigan,* 59 N. Y. Supp. 101. The case of *Lightfoot* v. *People,* 16 Mich. 507, is specially appropriate; a witness testified that the defendant said he was the man who had broken into the house on a previous occasion, and the witness was then permitted to go on to state the fact of the former breaking. This was held reversible error. The court said:

> "What defendant said at the time of the burglary for which he was being tried, in reference to the former breaking, was admissible, but evidence of the fact of that breaking was not."

One of the recognized exceptions to the general rule of exclusion of evidence of other crimes is where the evidence is necessary to prove intent, or guilty knowledge. There are two views as to this exception, one that it is a rule of necessity, creating an exception only where the testimony as to the immediate transaction carries no proof of intent, the other view, that proof of intent by other crimes may be used cumulatively. But it is very clear from the character of the cases in which this exception is given application, and from the rationality of the general rule itself as applied to the circumstances with which we are dealing, that the rule of exception to prove intent can have no application here. It is in cases of fraud, forgery, counterfeiting, embezzlement, or receiving stolen property that this use of evidence of other crimes is applied, because it is in such cases particularly that the same act may be guilty or innocent depending only on the design of the doer. But when we deal with a charge of crime founded upon the use of words to influence the conduct of others, the intent must relate itself definitely to these words as instruments of action, not with the secret purposes locked within

the breast of the defendant and to be divulged only by exhibiting his prior conduct; or the sequence of his conduct, as by repetition which refutes mistake or accident. Either the words used at Canton measure up to the charges based upon them, or they do not. Other indictments cannot elucidate an intent in the use of these words which the words themselves do not carry.

It would seem obvious that the rule of exclusion against evidence of other crimes by a defendant would much more strictly apply to a use of indictments and sentences against third persons, to whom defendant has no relation other than the mention of their names in his speech, with such commendation as he gave them on the basis of their devotion to Socialism, as he knew it.

For a statement of the reason of this rule of exclusion which we here invoke, we cite the following language from the decision of this court in *Boyd* v. *United States*, 142 U. S. 450, 458:

> (As to other robberies preceding a murder)—"They were collateral to the issue to be tried. No notice was given by the indictment of the purpose of the government to introduce proof of them. They afforded no legal presumption or inference as to the particular crime charged. Those robberies may have been committed by the defendants in March, and yet they may have been innocent of the murder of Dansby in April. Proof of them only tended to prejudice the defendant with the jurors, to draw their minds away from the real issue, and to produce the impression that they were wretches whose lives were of no value to the community, and who were not entitled to the full benefit of the rules prescribed by law for the trial of human beings charged with crime involving the punishment of death. * * * However depraved in character, and however full of crime their past lives may have been, the defendants were entitled to be tried upon competent evidence, and only for the offense charged."

We cite further the case of *Miller* v. *State* (Okla.) 163 Pac. 131, in which the court adopts this language from Underhill on Criminal Evidence (Sec. 88):

> "Some connection between the crimes must be shown to have existed in fact, and in the mind of the actor, uniting them for the accomplishment of a common purpose, before such evidence can be received. This connection must clearly appear from the evidence. Whether any connection exists is a judicial question. If the court does not clearly perceive it, the accused should be given the benefit of the doubt, and the evidence rejected. The mind of the jurors must not be poisoned and prejudiced by receiving evidence of this irrelevant and dangerous description."

In *Commonwealth* v. *Harmon,* 2 Gray (68 Mass.) 289 the court deals with evidence of other publications in a criminal prosecution for libelous publications:

> "But in relation to this species of evidence, the prosecutor must be confined according to the recognized practice and course of judicial decisions in this commonwealth, to the proof of libelous and defamatory publications and statements of the same kind as those of which the defendant is accused in the particular proceeding then pending against him."

We call attention also to the rule of construction of language in defamation cases which is specially appropriate here, that "where the charge is conditional in its form, the actionable quality of the imputation depends upon the fact assumed in the conditional clause" (25 Cyc. 361). The praise which Mr. Debs rendered to others convicted of crime was conditioned by his own statement of what he knew and felt about these persons, as has been herein quoted, not upon the averments of an indictment in no way brought to the consciousness of other minds by Mr. Debs, and plainly enough not even known to himself. Many of the noblest persons

who ever lived were convicted of the most serious felonies, yet praise of their nobility of character and purposes, or of their steadfastness to the truth as they saw it, would not be read as endorsement of the criminality charged against them. The judicial mind might recoil at the suggestion of high praise of murderers, yet the popular mind accepts as noble heroism the slaying of tyrants, an ever-recurring episode of progress toward liberty—and this without a changed conception of the crime of murder in its unheroic aspects of normal experience.

We add finally, as to the argument under this heading, that the argument under the next heading is largely applicable here as well.

III.

ADMISSION OF ST. LOUIS PLATFORM.

We urge as prejudicial error the admission as testimony of a document (Exhibit 2) purporting to be a members' referendum ballot of the Socialist Party. This was said to contain the "majority report" and "minority report" of a National Convention of that party held at St. Louis, April, 1917. As in the trial, this document will be referred to as the St. Louis Platform.

The argument under this heading applies also to the testimony of Joseph Trindel, who recited from memory two or three sentences purporting to be a verbatim record of what Mr. Debs said in a speech at Chicago, August 11, 1918, nearly two months after the Canton meeting (221). This Chicago speech, the complete record of which was not produced at the trial, was delivered at a National Conference of State Secretaries of the Socialist

Party, the witness stating that not over 20 were present (221). From the sentences quoted by the witness it appears that Mr. Debs characterized this war as a capitalist war, and that he hoped "there is no one present today who will want to change the party's former attitude toward the war." The witness, on cross-examination, added that Mr. Debs did not say what was the party's "former attitude" toward the war (222).

The St. Louis Platform was not mentioned in the Canton speech. There was no reference in that speech—the entire basis of all the charges in the indictment—which by any implication might be understood as a comment on that document, or on any part of its text. The testimony of Clyde Miller, a news writer for the Cleveland Plain-Dealer, was that he interviewed Mr. Debs an hour before the time of the meeting at Canton. The interview was brief, and was recollected as lasting between five and eight minutes (175). The witness asked Mr. Debs if the reports that he had repudiated the St. Louis Platform were true. Mr. Debs answered that he approved of that platform from the time of its adoption in spirit and substance; that he accepted its main ideas; but that "in the light of recent events" he favored a restatement (170). The witness pressed his inquiries as to what changes in that platform Mr. Debs would favor, and the answer was that a restatement at this time would take into account particularly the Russian developments (170).

There was no document used as the medium of this interview (172). There was simply the assumption that the interviewer and Mr. Debs understood each other in regard to what was the St. Louis Platform. In fact, in spite of a persistent attempt, the Government found it impossible to identify any writing as the St. Louis Plat-

form, in order to qualify it for an offer of testimony, by use of the witness Clyde Miller. This was done, finally, by calling Mr. C. E. Ruthenberg to the stand (216). He stated that he was a member of the Convention at St. Louis, and that from a cursory examination of Exhibit 2 he recognized the writing as the majority and minority reports of that Convention.

At this stage of the trial, the District Attorney read into the record the majority report of the St. Louis Convention as it appears in Exhibit 2 (218). It is to be noted that the writing which went to the jury contained also a minority report, not referred to in the testimony.

After the acceptance of the St. Louis Platform as evidence to show defendant's intent in making the Canton speech, witness Clyde Miller was recalled by the government (218) and related another interview with Mr. Debs in Cleveland on the day of his arrest (June 30th). In this interview it appears that the witness was primarily interested in the general career of Mr. Debs and there was only an incidental reference to the St. Louis Platform, whereupon Mr. Debs said again that he did not repudiate that platform "and if necessary, I will die for its principles" (218).

On the question of the admissibility of this document to prove defendant's "state of mind" in making his Canton speech, there was no testimony of affirmance of any version of the document by Mr. Debs in its entirety. There was no testimony of approval of its text in part, but there was testimony that Mr. Debs favored a restatement, without indication of how a restatement would affect the document as introduced. Yet what was permitted to go to the jury was the complete text of a document given publication about sixteen months before the time of the interview upon which its admissibility was predicated. No witness was produced who heard the

Canton speech and in any way connected it with the St. Louis Platform. This was done entirely as matter of argument by the District Attorney and his assistant, and in fact constituted the main theme of their addresses to the jury (Wertz argument, particularly 255-260).

Two of the charges upon which a verdict of guilty was returned were based upon the Espionage Act as it went into effect June 15, 1917; the third charge upon an amendment of Many 16, 1918. Or, more exactly, the charges against Mr. Debs were all under the amended form of the Espionage Act. The St. Louis Platform is a writing of April, 1917. It is a writing emanating from a convention of which Mr. Debs was not a member (216). He told the witness that he approved the principles of that writing. He repeated this in his address to the jury, adding that he voted for the "majority report" as a member of the Socialist Party (242).

It might be contended that Mr. Debs could have taken the stand and gone ahead with his interview with Clyde Miller; that he could have explained what he meant by his adherence to the St. Louis Platform; that he might have made complete and explained his Chicago speech as reported by Joseph Trindel. Right here is the test of the impropriety and unfairness of the admission of this St. Louis document, because it invites the alternative of a line by line exposition and commentary on an elaborate writing in which defendant had no part, and with which the testimony had connected him only to the extent of a broad statement that he approved its principles. A writing, to repeat, which had in no way been connected by testimony with the understanding of the Canton audience of the speech of June 16th.

The anomaly of this entire trial situation, considering now the array of the St. Louis Platform, the August

speech at Chicago, the court records of convictions of
defendants in three unrelated prosecutions, is that w
the audience at Canton, the effect upon whose minds
one speech is the gravamen of all the charges, could o
be influenced by the sentiments inherent in the expr
sions of Mr. Debs used in that speech, the jury was gi
the one speech in the detailed setting of all this ot
evidence *without the least offer of proof that there w*
understanding of any of these matters upon the part
the Canton audience other than the plain meaning of
words of that speech standing by itself. The trial
came distorted from the issue of the effect of defendan
words on other minds to a laboratory analysis of
state of defendant's own mind on June 16th, 1918. Si
the three charges in this review do not concern the
selves with criminality of language *per se,* there is
tolerable approximation of the standard suggested
one of the Senators (Cong. Rec., May 3, 1918, p. 6469)
punishing persons "under general principles" • •
"whose hearts are wrong."

The caution by the trial judge as to the limitation
this testimony to proof of criminal intent, repeated
the instructions, was of no benefit to the defendant, a
was really prejudicial in its nature. In so far as d
fendant's "state of mind" was in issue, it could on
have application to the specific criminal intent involv
in making the Canton speech, the intent without whi
that speech, no matter what its character, could not
made the basis of a charge of crime. Here was a reite
ated suggestion that this intent could be read into th
speech by the jury, from all these other sources, and th
read out again as if coming from the language of t
Canton speech itself. This was a method not of derivi
criminal intent out of that speech and its circumstanc

but or *reading criminal intent into it,* regardless of the potential effects of the Canton speech as a speech.

It would seem sufficient to state it as a self-evident proposition that the one fair way of dealing with the offers of evidence in this case was to give the jury what the audience at Canton got—a hearing of the one speech, with any description of the attendant circumstances, or gestures, or intonations, which would be helpful in making vivid what defendant did to influence his hearers. Or, if the language of the speech conceals its criminality, and this is to be elucidated by innuendoes, that this elucidation be definitely fixed in the understanding of the hearers subject to its invidious effects.

To illustrate, let us assume that there was some cabalistic word of phrase by which the speaker made known to his hearers the fact of the St. Louis Platform and his affirmance of that platform. (We ignore, of course, the character of that document, and the nature and pertinence of its affirmance in June, 1918.) Suppose that identification was made by testimony of hearers. What then? Is this sufficient to merge that document and the speech into one, as was done in this trial? As well say that the Constitution of the United States, or the Declaration of Independence, or the Bible, or all of these together, under a general affirmance by the speaker, in an interview or otherwise, should go to characterize his intent in making the speech of June 16th. As well open the doors to a reading into the record of the thousands of speeches made by Mr. Debs, four times candidate for the office of president of the United States, world renowned and active lecturer during a generation, every one of which undoubtedly reflected itself in the speeches which went before and after.

If the answer is that the test of relevancy is the
of other utterances as carried to the hearers in que
by the language declared upon, then we arrive at a
nite rule of exclusion applicable against both the p
cution and the defense alike, and this is the rule w
we invoke. The only "state of mind" which c
within the issues of this case is the specific crimina
tent to use a particular means, the speech at Canto
effect the criminal results charged. *People* v. *Molin*
168 N. Y., 297. Other utterances which do not inco
rate themselves in the "particular means"—as affec
the Canton audience—can have no application to
issue of intent in this case. Undoubtedly the trial ju
in his references to "state of mind," failed to make
exact differentiation between motive and intent, a dif
entiation which becomes easily confused in a crim
prosecution based on a man's public declarations of
own sentiments. Nevertheless, it is precisely in this
ferentiation that we find any rational basis for a rule
evidence as to the scope of inquiry in relation to ot
utterances.

This point was squarely raised in the recent case
United States v. *Krafft*, 249 Fed. 919 (Circuit Court
Appeals, Third Circuit). The charges in that case w
based on the Espionage Act before amendment, wher
was fairly open to contention that an actual injury
the military service, at least a frustrated inception
some interference, was the minimum requirement for a
charge under this law. But the court held that a will
purpose to cause insubordination was sufficient, goi
with the making of a speech. There were two issues:
what defendant said in his speech; 2, whether the la
guage was used with willful purpose to cause insubor
nation, etc. On the issue of intent, or purpose in maki
the speech charged, evidence was offered in behalf

the defendant of other utterances showing that he was in favor of the war with Germany. This evidence was held immaterial, and the reviewing court said (at p. 928):

> "What he said or did at other times and places was not material to the issues on trial."

Bearing in mind that the intention of the defendant in making his Canton speech cannot be arrived at except in the understanding of that speech itself, we cite further the accepted rule of *Post Publishing Co.* v. *Hallam*, 59 Fed. 530, that "words are to be construed according to their common understanding and not according to defendant's secret intention." The rules of construction of language in civil suits for slander and libel would, of course, be given even more strict application in dealing with words as the medium of committing felonies. If there is a hidden or covert meaning it must be known to those addressed (25 Cyc. 357). And in 25 Cyc. 355, the general rule of construction is stated as follows:

> "The rule is that words are to be taken in their plain and natural meaning and to be understood by courts and juries as other people would understand them, and according to the sense in which they appear to have been used and the ideas they are adapted to convey to those who heard or read them."

Or, as stated in *Reid* v. *Providence Journal Co.*, 20 R. I. 120:

> "Language is not to be forced or tortured in libel cases in order to make it actionable. It is to be taken in its plain and ordinary sense."

The rule as to spoken words is one of even greater liberality; Cooley on Torts, 2nd ed., p. 239, where the author says:

> "Vocal utterance does not imply the same degree of deliberation (as writing or printing); it is more

likely to be the expression of momentary pa
excitement, and it is not so open to the im
of settled malice. Therefore, if one shal
his neighbor, 'He is a rascal,' there is
strong probability that the expression
received by bystanders as anything mo
a mere vituperative epithet, indicative
feelings of the utterer, rather than
convictions. Therefore to such oral exp
little importance is generally attached. On t
hand, the same words deliberately written or
and afterward placed before the public, usua
tify an inference that they are the expres
settled conviction, and they affect the publ
accordingly.

"An oral charge is merely heard, and the ag
the wrongdoer in inflicting injury is at an en
the utterance has died upon the ear. But the
or printed charge may pass from hand to h
definitely and for many years."

Quoting again from *Reid* v. *Providence Journ*
20 R. I., at 122:

"The fact that supersensitive persons, wit
bid imaginations, may be able by reading b
the lines of an article to discover some defa
meaning therein is not sufficient to make it libe

The ordinary mind is the standard, and the or
instant impression of spoken words is the thing
tested. Consider, then, the incongruity of putti
fore these jurors, as a basis for judgment upon th
ton speech, the actual text of the St. Louis Pla
And this, merely on the basis of the one questio
answer in the interview of momentary character be
Clyde Miller and Mr. Debs, and not by any conn
with the Canton speech and its hearers.

We refer here to the preceding argument on th
mission of the indictments and records of convicti
other cases, on the basis of warm praise of these

persons by Mr. Debs in his Canton speech. All that is there said about proving intent by external evidence, as of prior convictions of same defendant, is also applicable here. The St. Louis Platform, if proclaimed by Mr. Debs in a public address or writing, by quotation of its text in full or part, on June 16, 1918, as of immediate pertinence, might very well, according to the understanding of the Espionage Act by the Government's attorneys, subject Mr. Debs to one or more criminal prosecutions. So of the Chicago speech of August 11th. There is nothing to be imagined about the confusion of issues in this proceeding, nothing left for surmise, when from the opening statement to the close of the argument the record leaves one in doubt whether the trial is proceeding upon the Canton speech or on the St. Louis Platform, so closely are the two held together before the jury.

There is no other angle from which the admission of this testimony can find support. To consider the proclamation of the Convention of April, 1917, as the initiation of a plan furthered by Mr. Debs on June 16, 1918, as indeed was the precise argument of the Government's attorneys, was to try him for conspiracy upon an indictment as sole defendant based on a single speech.

As to the possibility of invoking a doctrine of *res gestae*, of words accompanying other words as part of the same transaction, and constituting the criminal act, assuredly there is no shadow of affirmative argument. We call attention to the statement by Professor Wigmore, in his work on Evidence, Sec. 1774 (2):

> "The utterance serves merely to assist in completing and giving legal significance to conduct. Hence it is not needed when the conduct is already complete and definite in itself. The conduct must be equivocal or incomplete as a legal act before the utterances can be admissible."

Again, in Sec. 1775 (3):

"It follows, also, as necessary deducti
utterances must be such as serve the as
pose, namely, giving *definite significance*
ocal or indefinite conduct, by adding a m
They must be such as do merely this, and

The primary test, of course, is that the wo
"contemporaneous with the conduct." It is
ent for argument that words spoken to a rep
a Chicago audience, cannot form any part of
at Canton.

Of the Chicago speech, August 11th, it mig
that it can more easily be seen how it might
Debs to the jury as an unrepentant sinner
it attains pertinence to his achievements by wo
June 16th. There is no question of motive; n
as to the likelihood or unlikelihood of Mr. D
what he was charged with saying at Canton; n
corroboration by bringing a witness from C
to a speech in August. In the defamation cases
in relation to *malice* that subsequent publicatio
mitted. How anything said by Mr. Debs to Cl
on the day of his arrest, or at Chicago nearly tw
later, could be resolved into the consciousne
Canton hearers, or add to his *intent* on that oc
a good deal of a mystery.

We cite, finally, as to the admission of this t
the case of *United States* v. *Crandall,* 4 Cranch
(Fed. Cas. No. 14, 885). This was a prosec
libels tending to excite sedition among slaves
colored persons in the District of Columbia.
the charge was based on pictures, and the pr
offered these pictures into evidence attached to
phlets which explained them (to show the evil in

which the pictures were published). Quoting from the report (25 Fed. Cas. 689):

> "The court said, that if the matter now proposed to be read is not charged in the indictment, and would be, of itself, a substantive libel, and therefore indictable, it cannot be given in evidence."

• • • • • •

IV.

MILITARY FORCES.

The indictment, as to counts 3 and 7, proceeds on the assumption that all citizens between the ages of 21 and 30 constitute *the military and naval forces* of the United States. Count 4 assumes that all citizens between the ages of 18 and 45 are part of *the recruiting and enlistment service*. The instructions (268, 270) of the trial judge not only developed these assumptions, but even extended the definitions by including all persons in any way related to or intimate with citizens of these ages (270-271).

It is our contention that these terms, *military and naval forces*, and *recruiting and enlistment service*, have the definite meaning which is apparent in the plain reading of the statute, not the meaning by implication which has here been used. There has been a good deal of confusion about these terms in the decisions arising under this act, but probably no case brings before this court a more extreme broadening of the statute by implication than is presented here by the instructions of the trial judge, taking in "the attitude of friends, companions and relatives" as affecting the disposition of those within enlistment age.

On the general proposition of exact and strict construction of penal statutes it is not necessary for us to

cite further authorities. On the definition of military forces, we adopt the language of Judge Bourquin, in *United States* v. *Hall,* 248 Fed. 150, as follows:

> "Military and naval forces in the espionage act means the same as in the declarations of war, viz., those organized and in service, not those merely registered and subject to future organization and service."

The recruiting and enlistment *service* obviously denotes a definitely organized body or department of the military. These terms would be extremely inappropriate to a statute having reference to citizens of the United States generally; with such intent Congress would have avoided these technical names in favor of some phrase like "persons who might under the laws of the United States be subject to military service by compulsory or voluntary induction," or, in the recruiting clause, "citizens qualified to enlist."

The amendments of May 16, 1918, have not changed the clauses upon which counts 3 and 4 are founded, except to add the attempt feature to the recruiting clause, and to strike out "to the injury of the military service," presumably with the idea of discounting the suggestion of actual disturbance in the military forces.

The effect of this loose interpretation of these military designations in this case was, obviously, to direct attention entirely to general willingness to engage in the military service, aside from any question of legal obligation so to serve. The question was whether there might be an adverse effect on war enthusiasm and ardor, not whether anyone might be induced to forego his legal duty. In other words, these instructions and the indictment presented an issue of sedition, purely, and not an issue related to the organized military and enlistment services.

The terms "insubordination," "disloyalty," "mutiny" and "refusal of duty" bear definite understanding only in relation to an organized and established military body. Likewise, "to obstruct the enlistment service" obviously is not a description pertinent to the effect of utterances on the sentiments toward enlistment of people in general.

V.

THE ACTS CHARGED AGAINST DEFENDANT ARE PROTECTED UNDER THE FIRST AMENDMENT OF THE CONSTITUTION.

The vital issue of this case is the right of free speech. From several aspects, namely, the sufficiency of the indictment as a charge of crime, the ruling of the trial judge against the motion for a directed verdict for the defendant on all the counts of the indictment, and the instructions of the trial judge (274, 278) as to the range of public discussion free from Congressional limitation, this question is here presented on the review.

At the outset we avow our purpose to deal with this crucial issue of American liberty in a realistic sense. Counsel for Mr. Debs, as the record shows on its face, sought to intrude as little as possible between the presentation of the case for the Government and the defense of legitimate exercise by Mr. Debs of his right of free speech under the Constitution. In due deference to Mr. Debs, whose place in American history called for such expression of his understanding of his position as one charged with crime as he alone could give, counsel yielded to him the full time allowed for argument before the jury, and did not seek to develop his statement by way of examination on the witness stand.

The millions in many countries who respond to the idealism of Eugene V. Debs, from one angle or another,

will bluntly speak of the Debs case as a free speech fight. And their minds will not respond to a test of the right of free speech which concerns itself with the English common law arising out of the inspiration of the Star Chamber of Henry VII, which first applied the dormant Statute of Scandalum Magnatum (Statute 2 Richard 11 and 12 Richard 11). What they ask, we ask: What degree of tolerance of minority sentiments is to be read out of or into the American Bill of Rights in the year 1919 by the court of last resort? By this test has political freedom been gauged throughout the centuries. American tradition has so far made it unnecessary for this court to give a conclusive reading to the First Amendment in relation to a sedition enactment by Congress. With a profound sense of the significance of this present determination of the meaning of the First Amendment, for a century and a quarter the palladium of American freedom, we present the language of that amendment to the court as living words pertinent to the world as we know it—not as a harking back to legalistic shadings of restraints put upon opinion under the despotism from which the Revolution freed us.

* * * * * *

The present President has long held eminence as an authority on American political institutions and principles. In an address made October 13, 1899, at the annual meeting of the New England Association of Colleges and Preparatory Schools, Professor Wilson stated the perfect text for this brief. Especially significant is the relation of his statement to Spanish War criticism. He said:

> "We have seen a good many singular things happen recently. We have been told that it is unpatriotic to criticize public action. Well, if it is, then there is a deep disgrace resting uopn the origins of this nation. This nation originated in the sharpest

sort of criticism of public policy. We originated, to put it in the vernacular, in a kick, and if it be unpatriotic to kick, why, then the grown man is unlike the child. *We have forgotten the very principles of our origin if we have fogotten how to object, how to resist, how to agitate, how to pull down and build up, even to the extent of revolutionary practices if it is necessary, to readjust matters.* I have forgotten my history if that be not true history. * * *

"*Self-government is the opportunity of laymen to speak their minds about affairs and get heard upon a public forum.* That is the chief and essential feature of it. Just so long as European governments choke off discussion and put men in prison because of their opinions about personages in high places, they may have never so perfect a system of representation and never so modern a constitution, and be without self-government. Self-government is the free expression of lay, non-official opinion, and I know of no other essential characteristic about it."

* * * * * *

It is impossible to reconcile the published decisions in cases arising under the Espionage Act, on account of criticism of the government's war policies, with any rule as to the right of free speech. The First Amendment has been given some direct or inferential mention in practically all of these cases, but apparently the trial and Circuit appellate judges have easily swept it aside. In but one of these cases has there been discussion and definition leading to anything in the nature of a rule as to when the Espionage Act, applied to speech and press, might pass the bounds of constitutional validity. We refer to the discussion in *Masses Publishing Co.* v. *Patten*, 244 Fed. 535; 246 Fed. 24. While the decision in that case only goes to the question of the nature of the discretion lodged in the Postmaster-General under the Espionage Act, the discussion is somewhat helpful in presenting the gradation from a charge of crime based

on the use of words to incite specific action to a charg based on the objectionable temper of the words then selves.

Our contention here is that the pleadings, rulings o evidence and instructions have led to a sedition convic tion under a thin disguise of a charge of actual militar obstruction by means of words spoken to the Canton au dience, and that this conviction cannot be sustained un der any unequivocal application of the First Amend ment.

The indictment, under the several counts, presents no theory of the pleader as to the pertinence of defendant's words to move others to action. That is left entirely to argumentative inference. The record of testimony shows not one single question propounded on the basis of appropriateness of defendant's speech to affect one result or another through the minds and agency of his hearers. In fact there is the caricature of a conviction based nominally on military exigencies in which every witness who heard the speech, and who was within the military age, had not for one moment hesitated to fulfil his military obligations. That an "attempt" is charged only qualifies the degree of achievement; it does not carry the determination into the realm of metaphysical speculation based on hypothetical persons. The conclusion is irresistible that in spite of the cloak of military appropriateness given by a free use of the phraseology of the Espionage Act, the conviction of Mr. Debs rests squarely upon his "seditious temper"—and nothing else.

In the *Masses* case there was presented a series of articles and cartoons attacking bitterly the policy of conscription, holding up to admiration conscientious objectors, praising Emma Goldman and Alexander Berkman, who had been convicted of urging non-compliance

with the Conscription Act, and reflecting on the war declaration as the meek compliance of Congress with the orders of financial masters. The test of non-mailability under section 3 of the Espionage Act was made on the same basis as testing the sufficiency of this literature for charging a criminal violation of the provisions of this section, but in this respect the upper court relaxed the test in yielding to the determination of the Postmaster-General. District Judge Learned Hand granted an injunction against the New York Postmaster, holding that there was no basis for refusing delivery through the mails of the issue of the Masses in controversy. We quote from his opinion to indicate his method of dealing with public discussion in conjunction with the Espionage Act:

> "That such utterances may have the effect so ascribed to them is unhappily true; publications of this kind enervate public feeling at home, which is their chief purpose, and encourage the success of the enemies of the United States abroad, to which they are generally indifferent. Dissension in a country is a high source of comfort and assistance to its enemies; the least intimation of it they seize upon with jubilation. There cannot be the slightest question of the mischievous effects of such agitation upon the success of the national project, or of the correctness of the defendant's position.
>
> "All this, however, is beside the question whether such an attack is a wilfully false statement. That phrase properly includes only a statement of fact which the utterer knows to be false, and it cannot be maintained that any of these statements are of fact, or that the plaintiff believed them to be false. They are all within the range of opinion and criticism; they are all certainly believed to be true by the utterer. As such they fall within the scope of that right to criticize either by temperate reasoning, or by immoderate and indecent invective, which is normally the privilege of the individual in countries dependent upon the free expression of opinion as the

ultimate source of authority. The argument ma
trivial in substance, and violent and perverse in m
ner, but so long as it is confined to abuse of exis
policies or laws, it is impossible to class it as a f
statement of facts of the kind here in question.
modify this provision, so clearly intended to prev
the spreading of false rumors which may embarr
the military, into the prohibition of any kind
propaganda, honest or vicious, is to disregard
meaning of the language, established by legal c
struction and common use, and to raise it int
means of suppressing intemperate and inflammat
public discussion, which was surely not its p
pose."

The same construction would apply to the provisi
of the insubordination and enlistment clauses of Sect
3 constituting counts 3 and 4 of our indictment. Sur
an offense under these clauses must bear directly per
nent relation to the military and enlistment services, a
cannot be founded upon discussion of public policies
fecting public opinion and sentiment one way or anoth
It is the special embarrassment of the military whi
is protected by these two clauses as in the clause abo
analyzed by Judge Hand. As to the special charact
of the clause of Section 3 as now amended which is t
basis of count 7, this will be considered later.

Judge Hand proceeds upon "the normal assumptio
of democratic government that the suppression of hosti
criticism does not turn upon the justice of its substan
or the decency and propriety of its temper." He avoid
the direct question of Congressional power in this re
spect unless the statute clearly expresses the legislativ
intent to proceed on this basis. At page 540, he says:

"Assuming that the power to repress such opin
ion may rest in Congress in the throes of a struggl
for the very existence of the state, its exercise i
so contrary to the use and wont of our people tha
only the clearest expression of such a power justifie
the conclusion that it was intended."

We challenge the assumption that such power may rest on Congress at any time under any circumstances, and with this we deal later, but on the basis of the Espionage Act in its relations to the military program as such, undoubtedly Judge Hand has here indicated the correct rule of statutory interpretation. The next question is the rule by which spoken or written language may be measured as offenses against the Espionage Act (excluding now any effect of the amendments of May, 1918, to make utterances criminal *per se*). Such a rule is stated by Judge Hand, as follows:

> "Political agitation, by the passions it arouses, or the convictions it engenders, may in fact stimulate men to the violation of law. Detestation of existing policies is easily transformed into forcible resistance of the authority which puts them into execution, and it would be folly to disregard the causal relation between the two. Yet to assimilate agitation, legitimate as such, with direct incitement to violent resistance, is to disregard the tolerance of all methods of political agitation which in normal times is a safeguard of free government. The distinction is not a scholastic subterfuge, but a hard-bought acquisition in the fight for freedom, and the purpose to disregard it must be evident when the power exists. *If one stops short of urging upon others that it is their duty or their interest to resist the law, it seems to me one should not be held to have attempted to cause its violation.* If that be not the test, I can see no escape from the conclusion that under this section every political agitation which can be shown to be apt to create a seditious temper is illegal. I am confident that by such language Congress had no such revolutionary purpose in view.
>
> "The defendant's action was based, as I understand it, not so much on the narrow question whether these four passages actually advocated resistance, though that point was distinctly raised, as upon the doctrine that the general tenor and animus of the paper as a whole were subversive of authority and

seditious in effect. I cannot accept this test
the law as it stands at present. *The tradit*
English-speaking freedom has depended in no
part upon the merely procedural requiremen
the state point with exactness to just that co
which violates the law. It is difficult and ofte
possible to meet the charge *that one's general*
is treasonable; such a latitude for constructio
plies a personal latitude in administration
contradicts the normal assumption that law sh
embodied in general propositions capable of
measure of definition. The whole crux of this
turns indeed upon this thesis."

The point of challenge in the upper court op
against the ruling of Judge Hand was as to the r
sary degree of directness in urging conduct upon ot
especially in respect of advocacy of conduct by ho
up to admiration those who have violated the law i
precise connection of the military malfeasance atten
to be checked by this legislation. Since this point
interest to us, not alone in defining the necessary
nection between advocacy and action under this sta
but also in the analogy to the praise bestowed
Wagenknecht and others by Mr. Debs in his Ca
speech, we quote again the language of Judge H
(p. 542):

"One may admire and approve the course of a
without feeling any duty to follow him. There is
the least implied intimation in these words (pr
of conscientious objectors) that others are u
a duty to follow. The most that can be said is,
if others do follow, they will get the same adm
tion and the same approval. Now, there is su
an appreciable distance between esteem and em
tion; and unless there is here some advocacy of
emulation, I cannot see how the passages ca
said to fall within the law. If they do, it would
low that, while one might express admiration
approval for the Quakers or any established
which is excused from the draft, one could not

gally express the same admiration and approval for others who entertain the same conviction, but do not happen to belong to the society of Friends. It cannot be that the law means to curtail such expressions merely because the convictions of the class within the draft are stronger than their sense of obedience to the law. There is ample evidence in history that the Quaker is as recalcitrant to legal compulsion as any man; his obstinacy has been regarded in the act, but his disposition is as disobedient as that of any other conscientious objector. Surely, if the draft had not excepted Quakers, it would be too strong a doctrine to say that any who openly admire their fortitude or even approved their conduct were wilfully obstructing the draft."

The point of divergence from this opinion taken by the court of review is that the incitation to commit crime may stop short of a literal urging of the illegal performance. Account is taken as well of "the natural and reasonable effect of what is said to encourage resistance to a law." Counseling to crime may be indirect, but it is to be noticed that the citations of authorities relate to *accomplished crimes, traceable to such incitation*, not to the counseling or inducement standing by itself. The argument was that "the natural and reasonable" effect of this publication might be construed as an obstruction to recruiting, therefore that it was intended to obstruct recruiting. "And even though we were not convinced that any such intent existed, and were in doubt concerning it, the case would be governed by the principle that the head of a department of the government in a doubtful case will not be overruled by the courts in a matter which involves his judgment and discretion and which is within his jurisdiction."

The separate concurring opinion of Judge Ward, in the upper court, is very interesting as showing a hesitancy to go too far with the proposition of the effect

of language to produce a given result as t
tion for a statute limiting the use of the m
mention its serious criminal penalties. Ju
says:

> "Advice to resist the law may be indi
> as direct and the conclusion of the Postm
> eral in matters of fact, whether we agre
> or not, is final."

This is undoubtedly an overstatement of
given by the courts to findings made by adm
officers in the exercise of discretion subjec
review, and suggests at once that Judge Wa
ious to limit the effect of this decision to t
point of accepting the ruling of the Postmaste
He goes on:

> "I think it important, however, to say
> every writing the indirect effect of which
> courage recruiting or enlistment is within
> ute. In addition to the natural effect o
> guage on the reader, the intention to dis
> essential. Arguments in favor of immed
> or in favor of repealing the Conscriptio
> this indirectly. It is, notwithstanding, t
> tutional right of every citizen to express
> ion, both orally and in writing, and Cong
> not be presumed to have intended by the
> Act to authorize the Postmaster-General t
> such articles written honestly and witho
> tention of advising resistance to law."

The net result of the *Masses* case establishes
that a violation of Section 3 of the Espionage
inal clauses) consists of a purposeful urging,
or indirect means, of insubordination or refusa
in the military service, or purposeful obstru
like means, of the recruiting service. Unsatisf
is this decision, compounded of three distinct vi
it still represents the only published decisi

makes any serious attempt to reduce to a rule the criminality of public statements under those clauses of the Espionage Act which relate to interferences with the military or enlistment services. It is our contention that the rule as stated by Judge Hand is the correct rule, and that the test of criminal responsibility for expressions leading up to insubordination, etc., is the common law liability as an accessory, created by urging violation of law upon others. Beyond purposeful incitement to specific unlawfulness on the part of others, there is no power in Congress to make public utterances criminal —under any exigency, or as an incident of any express power granted to Congress under the Constitution.

* * * * * *

Before reverting to the indictment and instructions under consideration, we state shortly our understanding of the power of Congress to regulate public discussion by criminal enactments. Practically all of the cases since the adoption of the Espionage Act, in dealing with the right of free speech, while giving some measure of verbal recognition to that right, have abruptly swept aside any consideration of such a right in conflict with the general war purposes of the government. The inference of these decisions, and the obvious theory of the amendments to Section 3 of the Espionage Act added in May, 1918, is that public discussion can be constitutionally controlled as an incident of the war power. We earnestly submit that such interpretation of the right of free speech is a careless sweeping aside of the most vital principle of American freedom, not only without affirmative constitutional warrant, but in the face of the direct prohibition of the First Amendment.

When the Constitution was submitted to the States for ratification one of the chief points of opposition was the failure to include a Bill of Rights. The answer given, in the Convention by Roger Sherman (5 Elliott's

Debates, p. 545), and in the Federalist (No. 84) by Hamilton, was that as far as freedom of the press was concerned it was unnecessary to declare that a thing shall not be done which there is no power to do. In a letter to Jefferson, dated October 17, 1788 (Watson on the Constitution, p. 1359), Madison explained why he considered a Bill of Rights unnecessary, as tending to particularize in a domain where Congress had no power anyhow; and he then went on to explain why he was not opposed to adding a Bill of Rights, since power would assert itself against parchment guarantees of any kind and it was desirable to have the Bill of Rights as a basis of protest.

The First Amendment was not a limitation of the power of Congress to control free speech and the press but a simple denial of any such power. The common law and sovereignty control of speech and the press passed to the States, upon the Revolution, and remained there under the reserved powers, of which the Tenth Amendment is declaratory. We are not here concerned with State limitation of discussion, yet the definition of freedom of the press under the police power is pertinent to its clear demarcation from solicitation of crime. It is interesting, therefore, to note the statement of an eminent authority on police powers, Professor Freund, as to the extreme case of anarchist propaganda in relation to free speech. We quote from Freund's text on Police Powers, Sec. 475:

> "A proposition to forbid and punish the teaching or the propagation of the doctrine of anarchism, i. e., the doctrine or belief that all established government is wrongful and pernicious and should be destroyed, is inconsistent with the freedom of speech and press, unless carefully confined to cases of solicitation of crime, which will be discussed presently. As the freedom of religion would have no meaning without the liberty of attacking all re-

ligion, so the freedom of political discussion is merely a phrase if it must stop short of questioning the fundamental ideas of politics, law and government. Otherwise every government is justified in drawing the line of free discussion at those principles or institutions which it deems essential to its perpetuation,—a view to which the Russian government (1904) would subscribe. *It is of the essence of political liberty that it may create disaffection or other inconveniences to the existing government,* otherwise there would be no merit in tolerating it. This toleration, however, like all toleration, is based not upon generosity, but on sound policy, on the consideration, namely, that ideas are not suppressed by suppressing their free and public discussion, and that such discussion alone can render them harmless and remove the excuse for illegality by giving hope of their realization by lawful means."

Quoting further from the same author (Sec. 478, p. 513):

> "In accordance with the principles above set forth the constitutional guaranty of freedom of speech and press and assembly demands the right to oppose all government and to argue that the overthrow of government cannot be accomplished otherwise than by force; and the statutes referred to, in so far as they deny these rights, should consequently be considered as unconstitutional.
>
> "It is probably true to say that to the extent that anarchist agitation exceeds the bounds of free speech it is punishable under the principles of the common law, and that it is impossible to strike at anarchism as a doctrine without jeopardizing valuable constitutional rights."

It will be noted that the reasoning here is in exact accord with that of Judge Hand, as above quoted, with reference to anti-war agitation, except that Judge Hand makes the reservation that power to repress such opinion "may rest in Congress in the throes of a struggle for the very existence of the state." That this reservation is without substance is obvious when we ask at what

time is the life of the state, or its liberties, endangered? If this question is to be resolved by the declarations to that effect of one or many officials, such a danger will always exist as against the agitation desired to be suppressed. But if this question of danger to the state rests in the conscience of the people, how then can it ever become the foundation of legislation which gives it official fixity?

* * * * * *

In *Reynolds* v. *United States*, 98 U. S. 163, this court gave its approval to the Virginia Resolution drawn by Thomas Jefferson. That resolution defines the limits of toleration as follows:

> "To suffer the civil magistrate to intrude his power into the field of opinion, or to restrain the profession or propagation of principles, on supposition of their ill tendency, is a dangerous fallacy which at once destroys all liberty because he, being of course judge of that tendency, will make his opinions the rule of judgment, and approve or condemn the sentiments of others only as they shall square with or differ from his own. *It is time enough for the rightful purpose of civil government for its officials to interfere when principles break out into overt acts against peace and good order.*"

The Sedition Act of 1797 and its fate has heretofore been accepted as so decisive a settlement of the constitutionality of such legislation that our text-writers have dealt with the crime of seditious libel as obsolete. (Freund, Police Powers, Sec. 474.) Judge Cooley, in his book on "Constitutional Limitations," p. 526, says:

> "The Sedition Law was passed during the administration of the elder Adams, when the fabric of government was still new and untried, when many men seemed to think that the breath of heated party discussions might tumble it about their heads. Its constitutionality was always disputed by a large party, and its impolicy was beyond question. It

had a direct tendency to produce the very state of things it sought to repress. The prosecutions under it were instrumental, among other things, in the final overthrow and destruction of the party by which it was adopted, *and it is impossible to conceive at the present time of any such a state of things as would be likely to bring about its re-enactment or the passage of any similar repressive statute.*"

Alongside the frequent judicial expressions which have lately found their way into the cases in which free speech has been an issue, that public discussion is protected if it is *temperate*, or *honest*, or *fair*, or *loyal*, or *not subversive of the national purposes*, we set up the calmer wisdom of Judge Cooley (*idem.* p. 527):

"It is very easy to lay down a rule for the discussion of constitutional questions; that they are privileged if conducted with calmness and temperance, and that they are not indictable unless they go beyond the bounds of fair discussion. But what is calmness and temperance, and what is fair in the discussion of supposed evils in the government? And if something is to be allowed 'for a little feeling in men's minds,' how great shall be the allowance? The heat of the discussion will generally be in proportion to the magnitude of the evil as it appears to the party discussing it. Repression of full and free discussion is dangerous in any government resting upon the will of the people. The people cannot fail to believe that they are deprived of rights, and will be certain to become discontented, when their discussion of public measures is sought to be circumscribed by the judgment of others upon their temperance or fairness. They must be left at liberty to speak with the freedom which the magnitude of the supposed wrongs appears in their minds to demand; and if they exceed all the proper bounds of moderation, the consolation must be that the evil likely to spring from the violent discussion will probably be less and its correction by public sentiment more speedy than if the terrors of the law were brought to bear to prevent discussion."

It is our contention that Congress is without power pass any act in the nature of a sedition act, therefo we enter into no detailed comparison of the prese Espionage Act with the Sedition Law of 1797. Yet, sin the same principle is involved, it is interesting to no the grounds upon which the eminent lawyers of th time contested the constitutional validity of that ena ment. Although war with France was in preparation that time, it was never argued that the power to contr discussion existed as an incident of the war pow Mainly, in favor of the law, it was argued that the co mon law was part of the law of the United States, a co tention long since disposed of. The most careful sta ment of the relation of the Sedition Law to the impli powers of Congress is that of James Madison, in h famous report of the Virginia Legislature (Elliott's D bates, IV; also, Virginia and Kentucky Resolutio same volume).

* * * * * *

In the *Milligan* case, 71 U. S. 2, this court made cle the unchanged status of the Bill of Rights during ti of war. Quoting the eloquent language of Mr. Justi Davis:

> "Time has proven the discernment of our anc tors; for even these provisions, expressed in su plain English words that it would seem the ingenui of man could not evade them, are now, after t lapse of more than seventy years, sought to avoided. Those great and good men foresaw th troublous times would arrive, when rulers and pe ple would become restive under restraint, and se by sharp and decisive measures to accomplish en deemed just and proper, and that the principles constitutional liberty would be in peril, unless e tablish by irrepealable law. The history of t world had taught them that what was done in t past might be attempted in the future. The Cons tution of the United States is a law for rulers a people, equally in war and in peace, and covers wi

> the shield of its protection all classes of men, at all times and under all circumstances. No doctrine, involving more pernicious consequences, was ever invented by the wit of man, than that any of its provisions can be suspended during any of the great exigencies of Government. Such a doctrine leads directly to anarchy or despotism, but the theory of necessity on which it is based is false; for the government, within the Constitution, has all the powers granted to it which are necessary to preserve its existence, as has been happily proved by the result of the great effort to throw off its just authority. * * * But it is insisted that the safety of the country in time of war demands that this broad claim for martial law shall be sustained. If this were true it could be well said that a country, preserved at the sacrifice of all the cardinal principles of liberty, is not worth the cost of preservation. Happily it is not so."

* * * * * *

Mr. Debs made his speech at Canton to such a group of persons as he had addressed, as a noted and active publicist during three decades, thousands of times. The indictment charges that there were present in the audience young men of military and enlistment age. There was no dispute about this, and in fact it was reduced to irrelevance by the instruction of the trial judge that if Mr. Debs influenced anybody in a point of view inimical toward the war project, which these hearers might again transmit to friends of enlistment age, that was sufficient.

As has already been insisted, the charge of criminality does not relate itself to the speech—does not, we might more exactly say, *integrate* itself with anything that defendant said. The two, the formal averments and the speech, are set up in parallel columns. The indictment contains ten counts, but in no one of the counts is the pleading of the speech any different. The collision between the abstract averments and the speech is left for conjecture of judge and jury.

We call the attention of the court to the striking test of the character of this pleading, in that, in order to test the charges according to the canons of freedom of speech, under the Federal Constitution, we must search through this speech ten times—and ten times seek out for ourselves an affirmative theory of commission of the offense charged, or as many theories as any mind might produce out of this material in each of the ten instances, in order effectually to negative the charges as within defendant's right of free speech. The pleader having evaded the task of making a cogent charge, and the trial judge having again presented to the jury a series of legal abstractions alongside the mass of evidence, and the jury having added no clarification to the charges by the verdict, of what has defendant been informed except that, somehow, his speech, taken one way and another, is the basis of his conviction? Let another person seek guidance as to his rights of free speech and publication on the rule of this case, and what shall he find?

Inevitably, as we turn to this speech to see if there is anything in its character or text which leaves the domain of political discussion to enter upon solicitation of violations of law, we assume the viewpoint of the prosecuting attorney in argument, because the pleading leaves us no theory of unlawful speaking to take hold of. We must create such theories in order to answer them, *and this court would have to reconstruct, by its own inferences, the logic of the jury, in order to put into the record, for the first time, the three ways in which, by appropriate words to that end, the defendant induced or attempted to induce the several injuries to the United States to be fulfilled in the deeds of others.*

From our own viewpoint we would naturally see neither legal sense nor common sense, nor true honesty of criminal process, in straining to supply the series of

inferences, or rather guesses, invited by the pleader. We see no relation between the several formal recitals of the nature of certain crimes and the speech which they accompany, other than that they are printed in the same indictment and that the abstract averments state the time and place at which the speech was made. We would say, as Mr. Debs himself said (237):

"I admit having delivered the speech * * *. In what I had to say there my purpose was to educate the people to understand something about the social system in which we live and to prepare them to change this system by perfectly peaceable and orderly means into what I, as a Socialist, conceive to be a real democracy * * *.

"If I have criticised, if I have condemned, it is because I have believed myself justified in doing so under the laws of the land" (242).

But we go further. Search this speech through from first to last, and what is there in it that may be read as an incitement or encouragement toward dereliction of military or civic duty in relation to the war? Mr. Debs talks of the progress of the socialist movement and of the efforts to thwart it by misrepresentations; of Prussian militarism and the opposition of Bebel and the elder Liebknecht toward it as contrasted with the cordiality of Mr. Roosevelt toward the Kaiser and his enthusiasm for the German military system; of the reception of Prince Henry by the American plutocracy, with only James F. Carey, Socialist member of the Massachusetts Legislature, publicly protesting this obsequiousness to Kaiserism; of the universality of junkerdom, and its hypocritical pretensions of patriotism; of the assaults against Tom Mooney and Francis J. Heney; of the prosecutions against Kate Richards O'Hare, Scott Nearing, Max Eastman, Rose Pastor Stokes and the I. W. W.; of the Federal courts and the child labor decision; of the inspiration of Socialism; of the Bolsheviki of Russia; of

wars and their purposes; of landlordism; of explo
tion of the miners and the Socialist plan of common o
ership; of the history of the I. W. W. and the atta
against it; of the need of the workers for organizat
industrial and political.

Out of all this what rule would obtain by affirma
of defendant's conviction? *That this court supports
Espionage Law as a means of suppressing during
time an exposition and exhortation toward Sociali
national and international.* Anti-war politics would
confined to times of peace, when the issue has not
vitality of national immediacy. Certainly the lite
reader of the Espionage Act would find this a dubiou
subtle method of arriving at such a rule of criminal c
duct, with its extremely severe penalties.

One might assume, perhaps, that it is in what Mr. D
had to say about war that he subjected himself to
charges in the indictment, and, presumably, passed
bounds of political discussion to enter upon solicitati
or encouragement of conduct such as is described in
Espionage Act. What, then, did he say about wa
Turning from the subject of events in Russia, Mr. D
recalled the publication by the Russian Revolutioni
of the secret treaties—, "the treaties that were made
tween the Czar and the French government and the Br
ish government and the Italian government, proposi
after the victory was achieved, to dismember and d
perse and destroy the Central Powers." Sterling
port of Canton speech (204):

"These treaties have never been repudiated. Ve
little has been said about them in the American pre
I have a copy of these treaties showing that the purpo
of the Allies is exactly the purpose of the Central Po
ers. And that is the purpose that has always been t
purpose of war.

Wars have been waged for conquest, for plunder.
the Middle Ages the feudal lords, who inhabited the ca

tles whose towers may still be seen along the Rhine—whenever one of these feudal lords wished to enrich himself, then he made war on the other. Why? They wanted to enlarge their domains. They wanted to increase their power, their wealth, and so they declared war upon each other. But they did not go to war any more than the Wall Street junkers go to war. The feudal lords, the barons, the economic predecessors of the modern capitalist, they declared all the wars. Who fought the battles? Their miserable serfs. And the serfs had been taught to believe that when their masters declared and waged war upon one another, it was their patriotic duty to fall upon one another, and cut one another's throats, to murder one another for the profit and the glory of the plutocrats, the barons, the lords who held them in contempt. And that is war in a nutshell.

The master class has always declared the war; the subject class has always fought the battles; the master class has had all to gain, nothing to lose, and the subject class has had nothing to gain and all to lose, including their lives. They have always taught you that it is your patriotic duty to go to war and have yourselves slaughtered at a command. But in all of the history of the world you, the people, never had a voice in declaring war. You have never yet had. And here let me state a fact—and it cannot be repeated too often: the working class who fight the battles, the working class who make the sacrifices, the working class who shed the blood, the working class who furnish the corpses, the working class have never yet had a voice in declaring war. The working class have never yet had a voice in making peace. It is the ruling class that does both. They declare war; they make peace.

'Yours not to question why,
Yours but to do and die.'

That is their motto, and we object on the part of the awakened workers.

If war is right, let it be declared by the people—you, who have your lives to lose; you certainly ought to have the right to declare war, if you consider a war necessary."

At another point in the Canton speech, come
guage (208):

"And this is the high purpose of every So
the face of the earth. They are pressing forw
there, everywhere, in all of the zones that g
globe; everywhere these awakened workers, th
conscious proletarians, these horny-fisted chi
honest toil, everywhere wiping out the bounda
everywhere facing the larger and nobler pa
everywhere proclaiming the glad tidings of th
emancipation; everywhere having their hearts
to the most sacred cause that ever challenged
women to action in all the history of the world.
where moving toward democracy; everywhere
toward the sunrise, their faces all aglow with
of the coming day. These are the Socialists; t
the most zealous, the most enthusiastic crusa
world has ever known. They are making hist
will light the horizon in the coming generatio
are bound upon emancipating the human rac
have been reviled; they have been persecuted;
have been sufficient to themselves, pressing for
ward the height—aye, their triumph is now
begun!

Do you wish to hasten it? Join the Socialis
Don't wait for the morrow. Come now. Enr
name; take your place where you belong. Yo
do your duty by proxy. You have got to do so
yourself, and do it squarely, and look yoursel
face while you are doing it. And you will hav
casion to blush. You will know what it is to be a
woman. You will lose nothing; you gain everythi
only do you lose nothing but you are very apt
something, and that something will be yourself.
need to find yourself—to know yourself. You
know that you are fit for something better than
and cannon fodder. You need to know that y
not created to work and to produce to impoveris
self and to enrich an idle exploiter. You need
that you have a soul to develop, a manhood to
You need to know that it is your duty to rise ab
animal plane. You need to know that it is for
know something about literature, and about scie
about art. You need to know that you are on t
of a great new world."

We quote, finally, the closing sentences (214):

"And now for all of us to do our duty. The call is ringing in our ears. It is your duty to respond; and you cannot falter without being convicted of treason to yourselves. Do not worry, please—don't worry over the charge of treason to your masters, but be concerned about the treason that involves yourselves. Be true to yourself, and you cannot be a traitor to any good cause on earth.

Yes, we are going to sweep into power in this nation, and in every other nation on earth. We are going to destroy the capitalist institutions; we are going to recreate them as legally free institutions. Before our very eyes the world is being destroyed. The world of capitalism is collapsing; the world of socialism is rising.

It is your duty to help to build. We need builders of industry. We Socialists are the builders of the world that is to be. We are all agreed to do our part. We are inviting—aye, challenging you this afternoon, in the name of your own manhood, to join us. Help do your part. In due course of time the hour will strike, and this great cause—the greatest in history—will proclaim the emancipation of the working class and the brotherhood of all mankind."

There is little need for comment as to the nature of the appeal, or inducement to action, made in this speech. It is repeated again and again—organization of the workers along definite political and industrial lines in their own interest. War—its inherent nature throughout history, as defendant conceives it, is used as one argument toward this end. As to war itself, what is the exhortation? "Let it be declared by the people"—no other appeal, no other suggestion, except that wars are inherently associated with some system of exploitation.

War is a matter of political policy. The war declared April 6, 1917, was debated bitterly in Congress and throughout the country. There were 50 votes against the declaration in the House of Representatives, 6 in the Senate. The sentiment of the American people on this

date will always be a matter of wide varianc
ture. The continuation of war is a most v
of public policy. Is it intended by the Esp
to be made the exclusive concern of one or
cials? The alternative to free discussion o
matter of public, or political policy, during
a preposterous perversion of the established
of our own history, and a caricature of freed
and speech. It would be to say that an inhi
free discussion arises in degree of vital intere
in such discussion.

It will probably be contended that it is t
effect of these statements, the appeal inhe
statements themselves, regardless of the affi
peal made by the speaker to his hearers, upo
charges of the indictment are predicated.
obvious at once, when the problem of the pr
realized, why the Government had to seek s
to establish an "intent" to violate the Espio
an "intent" derivable in law, no matter hov
up extraneously, only from the materials of t
speech. From "the reasonable and natu
quences" of this speech, the specific crimi
three ways to prevail upon others in avoida
tary duties! Indeed it is not surprising that t
facing the original ten counts, made no attem
a special and definite theory of the offense i
of them.

Every way we approach this indictment, a
structions of the court, we arrive at the contr
*statement of an offense upon the basis of th
defendant's words to incite action or inactio
part of others* and the *actuality of a charge an
ceeding upon the basis of defendant's words
ror of his own mind in relation to war.*

There is not one syllable of this speech, or of any other statement of Mr. Debs, which does not come well within the range of freedom of speech. There is no statement attributable to him, and upon which the charge of the trial judge could proceed, which could be given criminal character by any act of Congress in conformity with the Constitution.

* * * * * *

Now as to the 7th count, which is one of the three counts upon which the conviction rests. The charge is that the defendant "did then and there unlawfully, wilfully and feloniously utter and publish certain language intended to incite, provoke and encourage resistance to the United States, and to promote the cause of its enemy, to wit, The Imperial German Government, etc."

There are three possible theories of this clause of the Espionage Act. The first is: to commit treason by instigation to treason. While the language might very well bear this construction it is an impossible basis upon which to sustain the clause, by the elementary principles applicable to the crime of treason. Congress has no power to amend or enlarge the definition of treason written into the Constitution.

The second alternative as to this clause is to give it the understanding of sedition, in the broad sense of irritating the general consciousness against the fact and program of war. This alternative is not only untenable under the First Amendment; it would have so glaring a vice of indefiniteness and generality in a criminal statute that it could not be entertained as the basis for an indictment.

The final alternative, the one apparently accepted by the pleader and the court in this case, is to deal with this clause as repetition and summary of the clauses

dealing with interferences with, and disobedience within, the military and enlistment services. This clause, in any reading, is of doubtful propriety in a criminal statute, but if its definition is of such character that it is properly joined with the other two clauses upon which the foregoing argument proceeds, we need press our objections to its constitutional validity no further.

* * * * * *

A case could not be imagined which brings more clearly and simply before this court the question whether or not ours is in truth "a government of opinion." It is only under the trying conditions of war, or other great national stress, that such a question could arise in a vital way. If the government is ever entitled to command a good opinion of itself and its policies on the part of its "subjects," the criterion enunciated by Lord Holt and many who entertain the same contempt of the people in our own day, then the event of war cannot remain the limit of power to silence "sedition." Either the First Amendment means all that it says—in the literal reading of Mr. Debs—or it means absolutely nothing. This latter alternative might seem an over-statement alongside the phraseology of "freedom from prior restraint." This is the favorite expression of some writers, but no matter that "freedom from prior restraint" may have meant much to the writers of a century and a half ago against the imprimatur by which all printing was subjected to despotic authority; it need only be said that the dependence of all present-day circulation of writings on the government postoffice, with power acknowledged in Congress to control broadly what shall go through the mails, leaves this distinction meaningless.

Freedom of speech, as enunciated by the First Amendment, must be declared in the broad terms of its universal understanding as the primary condition of human progress. No precision of judicial logic will give credence to any other reading of the First Amendment.

Respectfully submitted,

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